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APPENDIX A

General History of Oil Shale Lands

I. The Pre-1920 Period

A. *Classifications of Oil Shale Lands*

By three letters dated May 23, 1916 (Exhibit N), addressed to the Commissioner of the General Land Office, the Director of the Geological Survey stated with respect to lands in Colorado, Utah and Wyoming:

> During the field seasons for 1913, 1914 and 1915, reconnaissance examination in this region was actively carried forward, and it was demonstrated that over wide areas oil shale are present which average higher in petroleum content than those commercially worked in other countries. The average shale tested within the area examined yields more than one-half barrel of crude oil per short ton of rock and a yield of one barrel per ton is not uncommon.
>
> The net result of oil shale investigations already made is that the oil-shale areas in Colorado, Utah and Wyoming constitute a latent petroleum reserve whose possible yield is several times the estimated total remaining supply of petroleum in the United States.
>
> In view of the high prospective mineral value of lands underlain by oil-shale deposits it is, of course, apparent that they should not be permitted to be acquired under the non-mineral land laws. The lands have not been recommended for withdrawal because the oil-shale industry is not yet developed in the United States, and as it is

> desired to give opportunity for the establishment of experimental plants, it is believed the lands should remain open for the present to acquisition under the mineral-land laws, even though they are ambiguous and but poorly adapted to deposits of this type.
>
> Accordingly, I hereby classify the tracts listed below as mineral lands, valuable as a source of petroleum and nitrogen, and request that you make the proper notation of the classification upon your records: [1]

The above-quoted paragraphs were followed, by a detailed description of the lands in the States of Colorado, Utah and Wyoming classified as mineral in character prospectively valuable as a source of pe-

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[1] In Bulletin 641-F entitled "Oil Shale in Northwestern Colorado and Adjacent Areas" published by the United States Geological Survey December 18, 1916, the following appears:

> For several years it has been known that some of the shale of the Green River formation in northwestern Colorado and northwestern Utah would produce oil when subjected to destructive distillation, but the yield of petroleum from the oil fields was so great that production by distillation did not seem to be feasible, despite the fact that in Scotland such an industry has long been developed and is today paying dividends on a large investment.
>
> The United States Geological Survey has regarded this oil shale as a great reserve—an undeveloped resource—and one that would be developed as soon as the demand for petroleum greatly exceeded the supply. In anticipation of such an event, E. G. Woodruff and David T. Day began, in 1913, an examination of the Green River formation in Colorado and Utah and made rough field tests to determine the richness of the shale. Although these tests were not entirely satisfactory, they tended to confirm the general impression that this shale constitutes a source of oil which, sooner or later, will be called into use. . . .

troleum and nitrogen, because of their oil shale content. The three classification letters of May 23, 1916 have, over the years, been modified from time to time as more detailed examinations of the lands in those states have either discovered more oil shale lands, or have established that some of the lands previously classified as prospectively valuable for oil shale were, in fact, not prospectively valuable for this material (Exhibit N).

The classifications did not close the lands to entry and acquisition under the non-mineral land laws if there was an appropriate reservation of the oil shale to the United States under the Act of July 17, 1914, 38 Stat. 509, *et seq.*, 30 U.S.C. 121 *et seq.*, or a reservation of all minerals under the Stock-Raising Homestead Act of December 29, 1916, 39 Stat. 862 *et seq.*, 43 U.S.C. 291 *et seq.*

B. *Naval Oil Shale Reserves*

Because of an ill-founded presumption that the oil resources of the United States might be on the verge of complete depletion, action was taken to set aside certain public lands known or thought to contain petroleum for the use and benefit of the United States Navy. Among the lands set aside were some of the oil shale lands of the Piceance Creek basin area in northwestern Colorado. On December 6, 1916, the "Naval Oil Shale Reserve No. 1, Colorado No. 1," was withdrawn from entry under the public land and mineral laws (Exhibit O). A portion of this withdrawal order reads as follows:

> It is hereby ordered that all lands included in the following list shall hereafter constitute Naval Oil Shale Reserve No. 1, Colorado No. 1, and shall be held for the exclusive use or benefit of

> the United States Navy until this order is revoked by the President or by Congress.

A Presidential order of September 27, 1924 withdrew lands for "Naval Oil Shale Reserve No. 3, Colorado No. 2" (Exhibit O). This order reads, in part, as follows:

> It is hereby ordered that, subject to any valid existing claim and in so far as title thereto remains in the United States, the lands hereinafter described be, and the same are hereby, withdrawn from settlement, location, sale, or entry, and held for the exclusive use and benefit of the United States Navy, for the development of Naval Oil Shale Reserve No. 1, Colorado No. 1, until this order is revoked by the President or by Congress.

Although the order of September 27, 1924, is more explicit as to the extent and effect of the withdrawal, both orders had the same scope. That is, both orders withdrew from entry under either the agricultural or mining laws of the United States the lands described in them, and excepted from both were valid existing claims to the land, such as mining claims which had been validated by proper discoveries under the mining laws.

The Naval Oil Shale Reserve Nos. 1 and 3, situated in the southeast corner of the Piceance Creek basin area (the area shaded red on the map in Exhibit P) and a similar Naval Oil Shale Reserve in Utah were originally administered by the Department of the Navy. By the Executive Order of May 31, 1921 (No. 3474), the administration of these reserves was committed to the Secretary of the Interior. This Order was, however, revoked by the Executive order of March 17, 1927 (No. 4614), and all

three reserves have since been administered by the Department of the Navy (Exhibit O).[2]

C. *The Location of Oil Shale Claims*

Although some oil shale claims were located before 1916, it is believed that the vast majority of the oil shale claims were located from 1916 to February 25, 1920.[3] During this four-year period, location notices were recorded in various county recorder's offices in Colorado, Utah and Wyoming for thousands of oil shale claims plastered over millions of acres of public land. The exact number of such claims located before the passage of the Mineral Leasing Act of February 25, 1920 is not known inasmuch as there was no requirement that the locators advise the United States of the fact that they were asserting rights to the public lands. Some idea of the magnitude of the location activity can be gathered from the following statement made by the Secretary of the Interior (Exhibit 6):

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[2] In *United States* v. *Pan-American Petroleum Company*, 55 F.2d 753, the court held that the attempted transfer of the administration of the Naval Petroleum and oil shale reserves to the Secretary of the Interior was invalid and that leases signed by E. C. Finney as Assistant Secretary of the Interior covering the nations oil reserves had been executed without authority.

[3] In Bulletin 210 entitled "Oil-Shale—An Historical, Technical, and Economic Study" published in 1922 by the United States Bureau of Mines, the following appears:

> In 1914, Woodruff and Day published the result of an investigation of the oil-shales of the Green River formation in Colorado. That a mineral, from which oil could be obtained by destructive distillation, existed in parts of Colorado, Utah, and Wyoming, was well known; but this report, followed by those of Winchester, which have been widely quoted, gave rise to a remarkable interest in oil-shale in the United States during 1916. . . .

> . . . An examination was made by the General Land Office in the years between 1920 and 1930 to determine the status of the oil shale placer mining claims on and about the Green River shale formation in Colorado, Wyoming, and Utah. That examination disclosed that more than 30,000 such claims, embracing more than 4,000,000 acres of the public domain, were not being maintained by the performance of annual assessment work.

As a general rule, each of the recorded location certificates declared that eight persons had located a claim embracing 160 acres of public land by marking its exterior boundaries on the ground and by discovering within its limits a valuable mineral deposit. It would appear to have been an extremely unusual situation to locate a claim with less than eight names and covering less than 160 acres of land. One individual could locate a claim covering only 20 acres, but with the addition of names, up to a limit of eight, 20 acres could be added for each name. The annual assessment work of $100.00 per claim was the same whether the claim covered 160 acres or only 20 acres.

Physically marking the boundaries of a 160-acre claim on the rugged terrain covering most of the oil shale lands was, of course, no easy task. Remarkably, however, an examination of the recorded location notices listed in the abstracts of title introduced as evidence in these consolidated cases (Exhibit 259) reveals that the locators alleged they had accomplished this task, as well as the task of making a discovery of oil shale for each claim, on many such claims within a relatively short period of time. For example, the Atlas Nos. 1 through 18 claims, comprising approximately 2,800 acres, were allegedly located

in five days in the period of time beginning December 26 and ending December 31, 1919. The Bute Nos. 1 through 48 claims, comprising some 7,680 acres, were allegedly located in 13 days in the period of time beginning December 17, 1919 and ending January 2, 1920. The Tom Boy Nos. 1 through 12 claims, embracing about 1,920 acres, were allegedly located in the four-day period beginning January 12 and ending January 15, 1920. The Camp Bird Nos. 1 through 20 claims, totalling approximately 3,200 acres, were allegedly located in five days in the period of time beginning January 2, and ending January 7, 1920. And the Liberty Bell Nos. 1 through 12 claims, comprising 1,920 acres, were purportedly located in the four-day period beginning December 16 and ending December 19, 1919. Thus, 110 claims, embracing approximately 17,600 acres, were allegedly located during a 31-day mid-winter period of time beginning December 17, 1919 and ending January 15, 1920.

Steven A. Post's name appears as a locator of 102 of the 110 claims named above. Charley Anderson is named on 87 of the location certificates. J. C. Moore's name appears as a locator of 79 of the claims, while W. S. Furman and Ethel McGahen are each named on 59 location certificates. Emma J. Boyd's name appears as a locator of 48 claims and none of the persons named in the location certificates for the above-identified claims appear as locator of less than 12 of the claims.[4]

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[4] It is not known whether the locators of the Atlas, Bute, Camp Bird, Liberty Bell and Tom Boy claims were also named as locators for other claims that were allegedly located during the same 31-day period of time. It appears, however, that Stephen A. Post and others of the locators, also participated

It does not appear that any of the claims were located with the thought that the lands were presently valuable for mining purposes, i.e., that one would be justified in spending his time and money in extracting the oil shale (that was readily apparent in the cliff faces over hundreds of miles of area) and placing the oil shale, or products therefrom, in the market. It is possible that some of the claims were located with a bona fide intent to spend time and money, not in developing the property for mining purposes, but in an effort to ascertain whether the oil shale (which was of exceedingly widespread occurrence) might justify the development of a mining property. There seems to be little question that the great majority of the claims were located not for mining purposes, but for purposes of speculation, with the hope that at sometime the claims might be disposed of at a profit. Certainly no one held the opinion that millions of acres of oil shale lands could be mined at a profit.[8]

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in the location of the Two Gems claims and the Coscora claims (Exhibit RR—contest docket sheets for contests 11744 and 11746).

[8] In Bulletin No. 8 entitled "The Oil Shales of Northwestern Colorado" published in 1919 by the State of Colorado Bureau of Mines, the following statements were made:

> It is reported that some oil-shale claims have been sold at prices ranging from $5.00 to $30.00 per acre. In this connection it must be remembered that oil-shale lands at present, have little intrinsic value. They may be compared to limestone, clay or gravel deposits which are valuable only when favorably located. If they are far from markets or off the lines of easy transportation, they are worth practically nothing. Oil shale can have no commercial value until plants are constructed to convert it into saleable products, and consequently shale lands are valuable only as sources of raw material in connection

II. The 1920-1930 Period

A. *The Mineral Leasing Act of February 25, 1920*

In 1909 the Director of the Geological Survey reported to the Secretary of the Interior that the oil lands of the west were passing into private ownership so rapidly that within a short time, a matter of months, the public supply of oil would be exhausted and the Government would thereafter be forced to buy its supply from private industry. As a result, President Taft issued, on September 27, 1909, the first withdrawal of petroleum lands, a withdrawal which included over three million acres in California and Wyoming. This and other withdrawals were later ratified by the Congress with the passage of the Act of June 25, 1910, 36 Stat. 847, 43 U.S.C. 141-143, known commonly as the Picket Act. As amended in 1912, 37 Stat. 497, the Picket Act provided that lands withdrawn under its authority "shall at all times be open to exploration, discovery, occupation, and purchase under the mining law . . . so far as the same apply to metalliferous minerals. . . ."

During the ten-year period following the withdrawal of the petroleum lands numerous bills were introduced in Congress for the purpose of disposing of the nonmetalliferous minerals withdrawn under the authority of the Picket Act. It was not until August 1919, however, that Senator Smoot introduced a bill that ultimately received approval of the Committee on Public Lands, and, after much debate, was enacted by Congress. It became effective February 25, 1920. This act made land valuable for coal, phos-

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with such plants. Those nearest the railroads will probably be exploited within the next few years, while those remote from transportation and water supply will have only an indefinite prospective value for a long period.

phate, oil, oil shale,[5] gas and sodium exclusively leasable.[7]

The Mineral Leasing Act was "the expression of a new policy for the disposition of public lands open to exploration or entry, by lease, instead of by complete alienation."[8] The act provided, among other things, for (1) rentals, royalties and bonuses in favor of the United States,[9] (2) acreage limitations on the amount of land that could be held under lease, (3) the continuing control and supervision over the use and disposition of the surface of the lands by the Department of the Interior, and (4) the continuing control and supervision over the development of the mineral resources by the Interior Department. The act was a complete change from the philosophy of the mining laws that permitted (1) the unlimited location of mining claims simply by recording a location certificate in the county records, (2) the free use and occupation of the lands for mining purposes without any control or supervision, and (3) the acquisition of the complete fee title by the payment of $2.50 per

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[5] The bill as introduced did not specifically refer to oil shale. This was added in Committee. See House Report No. 398, 66th Cong. 1st Sess., October 21, 1919.

[7] For a more detailed discussion of the above, see American Law of Mining, Vol. 1, Sections 1.24 through 1.28.

[8] *West* v. *Work*, 11 F.2d 828, 831.

[9] Section 35 of the act, 30 U.S.C. 191, provided, as it does today, that 10 per cent of all money received from sales, bonuses, royalties, and rentals shall be paid into the Treasury of the United States and credited to miscellaneous receipts, that 37½ per cent of all money received shall be paid to the state within the boundaries of which the leased lands or deposits are located, and that 52½ percent of all money received shall be paid into, reserved, and appropriated as a part of the reclamation fund created under the reclamation laws.

acre for a placer claim if a mining claimant desired to obtain a patent rather than simply work the claim, exhaust the minerals and abandon the land.

Section 37 of the act, 30 U.S.C. 193, reads in part as follows:

> That the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals . . . shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

This section of the act provided (1) that with one exception deposits of leasing act minerals would be subject to disposition only under the terms of the act, (2) that such deposits could be acquired under valid mining claims existing on the date of the act and thereafter maintained in compliance with the laws under which initiated, and (3) claims existing on the date of the act could be perfected by diligent prosecution of work leading to a discovery.

The following legislative history sheds some light on the provisions of Section 37 of the act:

> Hearings on H.R. 3232 and S. 2812 before the House Committee on Public Lands, 65th Congress, 2d Session (1918), page 538:
>
> "MR. LENROOT. But you recognize that this bill in itself is withdrawal?
>
> "MR. SCHUYLER. Yes. Now that is where we come in to the point. If you are going to put in the theory of withdrawal, it cuts him off immediately, except to the extent

that he is working up on the claim diligently.

"MR. LENROOT. And that is the effect, is it not?

"MR. SCHUYLER. That is the effect.

"MR. LENROOT. The assertion of an adverse claim. And if a locator can not maintain himself upon such an assertion—could not maintain himself against a stranger if a stranger chose to enter the land—why should he have any right to be considered as against the Government, except to the extent of a preferential right to list? . . . Now, shouldn't the Government have the same right that a stranger has in asserting adverse claims?"

Debates on H.R. 3232 and S. 2812 on the floor of the House (1920), 59 Cong. Rec. 4581, Representative Lenroot:

"Under the Senator's amendment, consider this kind of case: A locator went upon land six months ago in good faith and proceeded for three months in good faith. He still is in good faith, but has not the money to develop and go further, and work has been suspended upon that location for three months. He is still in possession; it has not been withdrawn; no one else has asserted possession. The Senator's amendment would permit that man, when he had no valid claim because of the suspension of work, to begin work and proceed to patent. That is not the theory of the bill."

Hearings on H.R. 3232 and S. 2812 before the House Committee on Public Lands, 65th Congress, 2d Session (1918), page 602:

> "Mr. Lenroot. If I may make this suggestion, speaking as one member of the committee. I wish to say that in section 31 I had in mind protecting exactly the same rights that were protected by the circuit court of appeals alone in the Consolidated Mutual case,[10] but no more. If you think that section 31 does not do that, I would be very glad to have you propose an amendment to section 31."

B. *Investigation and Determination of Validity of Oil Shale Claims*

Concern over the status of the lands set aside for the Naval Oil Shale reserves led to an investigation of oil shale claims. It was soon discovered that while there were on file in various county recorder's offices thousands of location certificates for oil shale claims, little or no work was being done on the ground for the purpose of developing the claims. The responsible officials within the Department of the Interior decided to take some action to clear these "paper locations" from the public domain in order to facilitate and insure the proper operation of the Mineral Leasing Act.

The position of the Department of the Interior is shown by the following language in *The Federal Shale Oil Company* decision, 53 I.D. 213, 216:

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[10] In *Consolidated Mutual Oil Co.* v. *United States* (1917) 245 Fed. 521, the court held that a mining claimant in possession and in diligent prosecution of work leading to a discovery was protected even though no discovery had as yet been made at the time of a withdrawal of the lands from appropriation under the mining laws.

Counsel for appellant in their brief contend that the rulings in *Clipper Mining Co.* v. *Eli Mining Company* (194 U.S. 220), and *Cameron* v. *United States* (252 U.S. 450), upholding the jurisdiction of the department to determine the validity of mining claims for which no patent had been sought, do not apply for the reasons that the claims in both of those cases were in territory "previously withdrawn from exploration and purchase." The premise can not be admitted that the territory containing oil shale lands was not withdrawn from exploration and purchase under the mining laws. By the leasing act such lands were excluded from the operation of the general mining law and the oil shale deposits reserved for disposition only as therein provided, except "valid claims." Full power was given the Secretary to administer that act, and clearly in its administration it would be his duty to determine what lands are subject to lease, and what lands are within the exception of valid claims, as much so as it was to determine what lands were "valid claims" within the exception in the Monument Reserve in the *Cameron case*. . . . The public interest dictates that the facts bearing upon such inquiry should be ascertained and established when the evidence is available, and not postponed to await the day now apparently remote and unpredictable, when mining operations to extract oil shale have become economically practical and profitable, and rights under the leasing act would be invoked by persons wishing to avail themselves of its provisions, but when in all probability the question of whether a particular tract of land was within the purview of the act or within the exception of valid claims

would be difficult to resolve correctly because of the obliteration or effacement of evidence by lapse of time, and spurious claims would have to be permitted to stand for lack of evidence to establish their invalidity.

It was concluded that each claim would be examined and that, if the results of the examination warranted it, the claims would be challenged. As a result, the boundaries of thousands of claims were determined and each claim was examined for compliance with the mining laws. Where the examination showed failure to comply, a contest was initiated. Fraud in the location, lack of discovery, abandonment and failure to perform annual assessment work were found to be present, with a failure to perform annual assessment work the most frequent charge in the resulting contests.

Through the ensuing years it became apparent that considerable trouble and inconvenience could be avoided with a consequent savings in time and effort if the claims were contested solely on the grounds of a default in the performance of annual assessment work. For example, the Secretary of the Interior advised the Secretary of the Navy as follows (Exhibit A—letter dated August 8, 1931):

> If this charge [default in assessment work] is not denied by the claimants, or, if after answer is filed, the charge is proven at a hearing, the claims will be declared null and void, and there will be no necessity for attacking the claims on other grounds.

C. *The Pre-Krushnic Assessment Work Contests*

The Department's conclusion that an oil shale claim became invalid by a failure to perform the annual

assessment work was based on the provisions of Section 37 of the Mineral Leasing Act which withdrew lands valuable for oil shale from disposition under the mining laws except as to valid existing claims "maintained in compliance with the laws under which initiated."

The Department's position is set forth in the following excerpts from the decision in Emil L. Krushnic (On Rehearing) 52 L.D. 295, 300-301 (1929):

> In view of these well-settled constructions of the mining laws, which Congress may be presumed to have known when the leasing act was passed, there would seem to be no doubt that to maintain a claim in compliance with the laws under which initiated necessarily meant the performance of the requirements of annual labor, and that there was no other intent or purpose in the use of such words than to protect and preserve only claims where the possessory rights had been maintained. As between the Government and the claimant the test of the validity of the latter's claim is found in the provisions of section 37, and not that part of section 2324, Revised Statutes, which defines his rights with respect to some stranger who seeks to relocate the claim.
>
> * * * *
>
> When the original locators failed to maintain the claim by doing the annual assessment work within the period prescribed by law, all their rights against the Government in and to this location upon oil shale lands were extinguished. . . . The foregoing view finds strong support in a recent decision of the Circuit Court of Appeals for the 8th Circuit in the case of *Hodgson* v. *Midwest Oil Company* (17 Fed. (2d) 71),

where it was held that the failure to do the assessment work for 1921 upon an oil placer claim located in 1887 on lands included in a petroleum withdrawal made in 1909, terminated all possessory rights thereto.

* * * *

> It is contrary to the declared purpose and object of the act to assume that in doing away with the system of a free grant of the minerals and the grant of a fee title it was intended to preserve all the rights of a mining locator and at the same time relieve him of his duties, for that is the consequence if neither the Government nor an individual can now take advantage of his default. The fair and obvious meaning of section 37 is that if the annual work is not done, all the rights of the claimant are gone. . . .

A search of the 10-year legislative history of the Mineral Leasing Act does not reveal any specific intent or purpose on the part of Congress in providing that the leasing act minerals should not be subject to disposition under the mining laws except as to valid existing claims "maintained in compliance with the laws under which initiated" with the exception of the conclusions that might be drawn from the legislative history previously set forth in the discussion of Section 37 of the Mineral Leasing Act.

It is not surprising that the legislative history is for the most part silent as to the purpose and requirements of Section 37 of the Mineral Leasing Act. The purpose and wording is abundantly clear and would require no particular discussion or explanation. How could a mining claim be "maintained in compliance with the law under which initiated" other than by the performance of annual assessment work?

Actually Congress by withdrawing the leasing act minerals from disposition under the mining laws, and in addition providing for the continued maintenance of claims in compliance with the law under which initated, gave the Department of the Interior an even stronger basis for declaring claims null and void than had previously existed and been employed in the past by the Department. In a 1916 decision involving the validity of a mining claim covering lands included within a withdrawal under the reclamation act for irrigation works, the Department stated:

> This is undoubtedly the true rule, for where a claimant is in default so that his claim could be defeated by another individual adverse claimant, surely the Government, desiring to devote the land to an important public use, may likewise take advantage of the default and divest the claim so as to free the land for Government use. (*E. C. Kinney*, 44 L.D. 580)

In other words, in the 1916 decision the Department construed the law as requiring the maintenance of a claim by the performance of annual assessment work as a condition subsequent to its continuing validity, and if the claim was not so maintained, it could be defeated by an intervening withdrawal of the lands.

It would certainly seem that Section 37 of the Mineral Leasing Act in going beyond a simple withdrawal of the lands and specifically providing for the continued maintenance of claims at least impliedly recognized the Department of the Interior's construction of the law in the *Kinney* decision.

The Department's conclusion that a mining claim became invalid if it was not maintained by the performance of annual assessment work as a result of

the Congressional withdrawal accomplished by the Mineral Leasing Act was reinforced by the decision by what is now the Tenth Circuit Court of Appeals in *Hodgson* v. *Midwest Oil Company*, 17 F.2d 71 (8 Cir. 1927), cited and relied upon by the Department in its *Krushnic* decision, *supra*. In the *Hodgson* case, the court held that a failure to perform annual assessment work for an oil placer claim, located before the 1909 petroleum withdrawal, terminated the claimant's right to the lands, and that the mining claimants could not, for this reason, eject persons entering the lands under the authority of an oil and gas lease issued pursuant to the Mineral Leasing Act of February 25, 1920. This conclusion was based on the opinion of Mr. Justice Pitney in *Union Oil Company* v. *Smith*, 249 U.S. 337 (1919), much of which was quoted by the Circuit Court. A portion of the quoted excerpt, from pages 349 and 350, reads:

> Actual and continuous occupation of a valid mining location based upon discovery is not essential to the preservation of the possessory right. The right is lost only by abandonment, as by nonperformance of the annual labor required by section 2324.
>
> * * * *
>
> And it is important to observe that in these acts of Congress, as in the practice of miners, "assessment work" had nothing to do with locating or holding a claim before discovery. On the contrary it was the condition subsequent prescribed by Congress to be performed in order to preserve the exclusive right to the possession of a valid mineral land location upon which discovery had been made.

Based upon Mr. Justice Pitney's reasoning, the Circuit Court held as follows, at pages 76-77:

> From the foregoing it is clear that such original locator and his assigns was required as a condition subsequent to do the so-called "assessment work" periodically, and, upon failure to do during any interval fixed by law, all possessory rights terminated. Ordinarily, and in the absence of any withdrawal, the locator would have the right to relocate, equally only, however, to any other person qualified to locate.

In view of (1) the past administrative practice evidenced by the Kinney decision, *supra*, and followed in *Interstate Oil Corporation et al.*, 50 L.D. 262, (2) the language of the court in the *Hodgson* case, *supra*, and (3) the plain and unambiguous wording of Section 37 of the Mineral Leasing Act, it seems obvious that there was ample legal argument to support the conclusion that the Department not only could declare claims invalid where they were not being "maintained" by the performance of assessment work but that it had a clear duty to do so.

How could the Department of the Interior, charged with the duty and responsibility of administering the public lands and effectuating the purposes of the Mineral Leasing Act, sit idly by and ignore the thousands of claims plastered over millions of acres that were not being "maintained" by the performance of annual assessment work, when Congress had specifically directed that the leasing act minerals could not be acquired under the mining laws except as to valid claims existing at the date of the act "and thereafter maintained in compliance with the laws under which initiated"?

D. *The Krushnic Court Review*

As a result of the Department's interpretation of its duties and responsibilities in administering the public lands and in accordance with its construction of the Mineral Leasing Act thousands of oil shale claims were declared null and void on the grounds of a failure to maintain the claims by the performance of annual assessment work. In one such case (Krushnic) the parties were sufficiently interested to seek court review.

In that case the Department had concluded that the claim, which was the subject of a patent application, had become null and void by the failure to perform the annual assessment work for one year, and that the subsequent resumption of the assessment work by Krushnic did not affect the validity of the claim.

In its decision *United States ex rel. Krushnic* v. *West*, 30 F.2d 742 (U.S. App. D.C. 1929), the Court of Appeals for the District of Columbia refused to follow the rationale of what is now the Tenth Circuit Court in the Hodgson decision. At page 746 the court held:

> The fundamental error in the opinion, as we have pointed out, was in holding that failure to do assessment work automatically terminates a locator's rights. It was this misinterpretation of the law which led the Department into error.

The court thereupon reversed the action of the Department in declaring the Krushnic claim null and void, and ordered the issuance of a writ of mandamus to compel the Secretary to issue a patent to the oil shale claim involved in that case.[11]

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[11] The court concluded it could compel the Secretary, by a writ of mandamus, to issue a patent only because the De-

The Supreme Court also held in favor of the mining claimant. At pages 317 and 318 the court in *Wilbur* v. *United States ex rel. Krushnic*, 280 U.S. 306 (1930) held:

> It is not doubted that a claim initiated under section 2324, Rev. Stat., could be maintained by the performance of annual assessment work of the value of $100.00; and we think it is no less clear that after failure to do assessment work, the owner equally maintains his claim, within the meaning of the leasing act, by a resumption of work, unless at least some form of challenge on behalf of the United States to the valid existence of the claim has intervened,

The Supreme Court modified the Circuit Court's mandamus order, however, stating, in effect, that the Secretary should not be ordered to issue a patent, but should be ordered to dispose of the patent application on its merits, without reference to the default in the performance of assessment work which had been cured.

It seems clear that the court in the *Krushnic* decision simply found that the Secretary had erroneously interpreted and applied the law in discharging his duty of determining the validity of the mining claim and Krushnic's right to a patent. The court did not in any way cast any doubt upon the jurisdiction of the Department of the Interior to investigate and

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partment had conceded all facts in favor of the issuance of a patent except the fact of performance of assessment work. This being the case, the court, at page 746, held it was "not invading the exclusive jurisdiction of the Secretary to determine discretionary questions of fact, nor his interpretation of the meaning of a law upon which the exercise of his discretion depends."

determine the validity of the mining claim and the right of Krushnic to a patent for the land. Nor did the court cast any doubt upon the authority of the Interior Department to construe and apply the Mineral Leasing Act in the discharge of its duty to determine the claimed right of Krushnic to an interest in the public domain.

Following the Supreme Court's decision the Department of the Interior issued two decisions implementing the Court's directives. In the first, *Standard Shales Products Company* (On Rehearing), 53 I.D. 42, 45 (1930), the Department held:

> . . . Therefore the order directing adverse proceedings against the claims on account of such default (in assessment work) was unauthorized and is hereby vacated and the case is remanded with directions to clearlist the claims for patent, all else being found regular. The case of *Emil L. Krushnic* and all others in so far as they are in conflict with this decision are overruled.

This case was pending before the Department as the result of a motion for rehearing filed by the mining claimant. The Department acceded to the request of the claimant to withhold consideration of the motion until final decision of the *Krushnic* case in the courts.

The second decision, *Emil L. Krushnic* (On Reconsideration), 53 I.D. 45, 46 (1930), concludes with the following:

> Although no writ has yet been served upon the Secretary, no reason for delay is perceived for disposing of the application in accordance with the law as stated by the Supreme Court. The departmental decisions above mentioned [*Emil L. Krushnic*, 52 L.D. 282, *Emil L. Krushnic* (On

Rehearing), 52 L.D. 295], are accordingly hereby recalled and vacated. The record in the case is herewith transmitted with instructions to reinstate the application and entry and to dispose of the same unaffected by the default in the performance of assessment labor for the assessment year 1920, and if all else is found regular, to clearlist the application for patent.[12]

III. The 1930-1945 Period

A. *The post-Krushnic Assessment Work Contests*

In view of the language in the *Krushnic* case that an "owner equally maintains his claim, within the meaning of the leasing act, by a resumption of the work, unless at least some form of challenge on behalf of the United States to the valid existence of the claim has intervened," the Department took the necessary action to investigate and determine the validity of oil shale claims upon which assessment work had not been resumed.

The Department's challenge to the validity of a claim for which assessment work was not being done took the form of a notice posted on the claim; the notice declaring that the United States had taken possession of the land for its exclusive use and benefit. This was a tremendous undertaking. Its magnitude is illustrated by the following excerpts from the Secretary's annual reports for the years 1930 through 1933 (Exhibit M):

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[12] If the word "overruled," as used by the Department, is the equivalent of "vacated," this final departmental *Krushnic* decision is surplusage as the Department in the *Standard Shale Products Company* decision, *supra*, which immediately preceeded this decision, specifically "overruled" the earlier *Krushic* decisions and all other in conflict with that decision.

1930

Oil-shale lands, though having no immediate value for oil, have received vigorous protection. During the past year, commencing last spring, every mining engineer in the General Land Office, save three, was called off other work and under my personal orders assisted in identifying, examining, and physically posting more than 6,400 oil-shale claims with notice of default to the United States for failure of the claimant to perform assessment work. This followed the Supreme Court decision of *Wilbur* v. *Krushnic.*

. . .

1931

Charges were directed against 7,568 locations, embracing approximately 900,592 acres.

Sixty-four oil-shale contests were on hand at the beginning of the year; 217 were received, 178 of these contests were decided, leaving 103 unadjudicated July 1, 1931. During the year, 1,181 shale locations, embracing approximately 140,539 acres, were declared null and void.

1932

Charges were preferred against 14,395 locations embracing approximately 1,713,000 acres. Undecided at the beginning of the year were 103 oil-shale contests, to which number was added 1,794 new cases. Decisions were rendered in 1,777, leaving 120 pending. Locations numbering 10,918 for 1,294,500 acres were declared null and void.

1933

Charges were directed against 873 locations embracing 113,490 acres.

There were 120 contests against oil-shale locations pending at the beginning of the year, including locations under patent proceedings; 1,655 new cases were added and 1,615 were disposed of, leaving 160 pending. Locations to the number of 11,146 for 1,448,980 acres were declared null and void.

The report for 1934 states that action on oil shale locations was suspended on April 1, 1933, insofar as challenges based on a failure to perform annual assessment were concerned, to await the outcome of litigation brought to test the validity of the action taken by the Department, litigation which ended with the issuance by the Supreme Court of the decision in *Ickes* v. *Virginia-Colorado Development Corp.*, 295 U.S. 639 (1935).

Other actions affecting the oil shale lands had, however, transpired before the *Ickes* decision was issued. These will be discussed briefly at this point.

B. *The General Withdrawal of Oil Shale Lands*

Although the Mineral Leasing Act of February 25, 1920 modified the pre-existing mining laws of the United States to the extent that oil shale and the other named minerals and lands containing such deposits were no longer subject to appropriation and location under the mining laws, the lands containing such minerals remained, by virtue of the Act of July 17, 1914, *supra*, and the Stock-Raising Homestead Act of December 29, 1916, *supra*, open to agricultural and other non-mineral entries. In addition, of course, the lands and deposits of minerals were sub-

ject to lease under the Mineral Leasing Act.[13] This was changed by an Executive Order dated April 15, 1930 (Exhibit Q), which reads in part as follows:

> Under authority and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497), it is hereby ordered that subject to valid existing rights the deposits of oil shale, and the lands containing such deposits owned by the United States, be, and the same are hereby, temporarily withdrawn from lease or other disposal and reserved for the purposes of investigation, examination, and classification.

This order coupled with the withdrawal accomplished by the 1920 Mineral Leasing Act with respect to mining locations withdrew the oil shale lands from appropriation under any of the public land laws.[14]

On April 3, 1931, an Act of February 28, 1931, 46 Stat. 1454, amending the Stock-Raising Homestead Act of 1916, was construed to permit stock-raising homestead applications to be made for lands contain-

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[13] No attempt has been made to check the number of non-mineral entries or the number of leases and/or permits issued for the various minerals named in the Mineral Leasing Act that may have conflicted with oil shale claims covering millions of acres in Colorado, Utah and Wyoming.

[14] It might be argued that the 1930 withdrawal was under the Pickett Act, and accordingly, the lands remained open to the location of mining claims covering metalliferous minerals. This, however, overlooks the fact that Section 1 of the Mineral Leasing Act, 30 U.S.C. 181, provided that deposits of oil shale, and lands containing such deposits could only be disposed of in the form and manner provided by the Mineral Leasing Act.

ing deposits of oil shale withdrawn by the Executive Order of April 15, 1930 (Exhibit Q).

On February 6, 1933, an Executive Order was issued modifying the 1930 withdrawal to the extent of authorizing the Secretary of the Interior to issue oil and gas permits and leases under the general leasing act of 1920 for any of the withdrawn lands (Exhibit Q).

The Executive Order of April 15, 1930, was further modified by an order dated May 13, 1935, authorizing the Secretary of the Interior to issue sodium permits and leases under the leasing act for any of the withdrawn lands (Exhibit Q).

In summary, the oil shale lands were closed to mining locations by the Act of February 25, 1920, and then closed to all other appropriations by the Executive Order of April 15, 1930. The lands were subsequently opened during the 1930s to acquisition under the Stock-Raising Homestead Act and to oil and gas and sodium leasing under the 1920 act.[15]

It might be argued that when the oil shale claims were declared null and void between 1930 and 1933 and the decisions became final, the claims did not go into a suspended status awaiting the possibility of subsequent action at some indefinite time in the future, but the lands reverted to the unappropriated public domain, and the Congressional withdrawal under the Mineral Leasing Act and the Presidential withdrawal under the Order of April 15, 1930, attached to the lands. Under this argument it is cer-

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[15] Again no attempt has been made to ascertain the number of stock-raising homesteads or the number of oil and gas or sodium leases and/or permits that may have come into existence covering the hundreds of thousands of acres of oil shale claims that had been declared null and void between 1930 and 1933.

tainly questionable, if the assessment work decisions were effective when rendered, that a Secretary of the Interior could breathe life into thousands of oil shale claims and thereby remove hundreds of thousands of acres of land from the Congressional and Presidential withdrawals.

C. *The Indian Lands*

Almost all, certainly the most important, oil shale lands in the State of Colorado, and a great portion of the oil shale lands in the State of Utah, had been set apart in the 1860s as Indian reservations (Exhibits P and UU).

The area set apart in the State of Colorado, including the all-important Piceance Creek basin area, was set apart for the exclusive use of the Ute Indians by the treaty of March 2, 1868 (13 Stat. 619). Under the terms of this treaty, no non-Indian had the right to make either a mining or an agricultural entry on the lands. By the Act of July 23, 1882 (22 Stat. 178), the major portion of the lands set apart for the reservation, including the Piceance Creek basin area, was, however, made a part of the public domain, thus becoming subject to both mineral and agricultural entry under the public land and mineral laws.

In Utah, the Act of May 5, 1864 (13 Stat. 63), established a reservation in the Uintah Valley for the Indians living in the Territory of Utah. The Act of May 27, 1902 (32 Stat. 245), restored much of this land to the public domain. A portion of the act reads as follows:

> That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as

> practicable by an inspecter, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October first, nineteen hundred and three, on which date all the unallotted lands within said reservation shall be restored to the public domain.

The Indian lands discussed above remained as public domain lands, subject, however, to certain rights of the Indians to share in the proceeds received from the disposition of the lands until 1934. In that year, Congress passed the Act of June 18, 1934 (48 Stat. 984), to conserve and develop Indian lands and resources and for other purposes. Section 3 of that act is quoted below:

> The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States: Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act.

Pursuant to the language in the above-quoted section, the Secretary of the Interior, on September 19, 1934 withdrew Indian reservation lands, including the affected oil shale lands in Utah and Colorado, from further disposition. The reason for the withdrawal is stated in the Instructions of August 10,

1934, reprinted in 54 I.D. 559 (Exhibit P), a portion of which follows:

> It, therefore, will be some time before it is known definitely whether the Indians of any of the reservations will exclude themselves from operation under the act . . . there is a possibility that in the meantime some desirable undisposed of "opened" lands might be entered or filed upon by non-Indians and thereby prevent the restoration of such lands to tribal ownership. For this reason, action should be promptly taken to prevent, for the present, the further disposition of any such lands by public entry, sale, or otherwise. A withdrawal of this kind would be merely of a temporary nature.
>
> * * * *
>
> It is, therefore, recommended that all undisposed-of lands of the Indian reservations named above that have been "opened," or authorized to be "opened," to sale, entry, or any other form of disposal under the public land laws, or which are subject to mineral entry and disposal under the mining laws of the United States . . . be temporarily withdrawn from disposal of any kind, subject to any and all existing valid rights, until the matter of their permanent restoration to tribal ownership, as authorized by section 3 of the Act of June 18, 1934, supra, can be given appropriate consideration.

By orders of restoration dated July 17 and November 13, 1937 (Exhibit P) the Secretary purported to restore certain lands in the southern portion of the area in Colorado ceded in the agreement of 1880 to the Ute Indians. The restoration to tribal ownership of the Ute Reservation lands in the State of

Colorado was halted by an additional act of Congress.[16] Section 6 of that act, the Act of June 28, 1938 (52 Stat. 1209), reads in part as follows:

> . . . Anything in any other Acts of Congress to the contrary notwithstanding, no lands in Colorado north of and including range [township] 35 formerly owned or claimed by the Ute Indians or any band thereof shall be restored to tribal ownership under the provisions of section 3 of the Act of June 18, 1934 (48 Stat. 984), and said lands to the extent they have not been disposed of by the United States are hereby declared to be the absolute property of the United States.

Hence, by an order dated December 8, 1938, the Secretary of the Interior revoked the temporary withdrawal of September 19, 1934 as to the lands in Colorado. The revocation became effective January 31,

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[16] In *The Confederated Bands of Ute Indians* v. *United States* (1943) 100 Ct. Cl. 413, 419, the following statement appears:

> Many of the lands ceded under the Act of 1880 and undisposed of on June 18, 1934, had been included in grazing districts under the Taylor Grazing Act of June 28, 1934, 48 Stat. 1269, and furnished a necessary basis for the stock-raising industry in the western part of Colorado. Since the Taylor Grazing Act specifically provided that no Indian reservation could be included in a grazing district, the purported restoration by the Secretary of the Interior of public land in Colorado to the Ute Indians created much alarm and uneasiness among the citizens of western Colorado who feared that all the lands not yet disposed of under the 1880 Act might be similarly treated by the Secretary of the Interior. To prevent any further action of this nature, an amendment to the pending bill which became the Jurisdictional Act of June 28, 1938, was offered and adopted. . . .

1939, at which time all the lands and mineral deposits released by the order became subject to use and disposition as provided by the public land laws and the mining laws of the United States.

Congress did not interfere with the restoration of tribal lands in Utah. On August 25, 1945, the Department issued an order restoring approximately 217,000 acres of unallotted Indian lands to tribal ownership, in that State, much of which is oil shale land (Exhibit UU). While no definite determination appears to have been made concerning the rights of the Indians in Utah to oil shale, there is at least some indication that the Indians may have obtained both the surface of, and the minerals found in, the lands restored in 1945.[17] If the assessment work decisions rendered between 1930 and 1933 were effective when rendered, then the inchoate rights of the Indians in Colorado and Utah attached to the lands. While the rights of the Indians in Colorado were subsequently eliminated in 1938, the inchoate rights of the Indians in Utah remain effective today.

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[17] In an opinion published in 59 I.D. 393, dated January 27, 1947, the Solicitor concluded, according to the headnote:

> The order of August 25, 1945, restoring to tribal ownership "all lands which are now or may hereafter be classified as undisposed-of opened lands of the Uintah and Ouray Reservation" includes minerals reserved to the United States under patents issued for the surface of the opened lands of the reservation.

A patent dated October 5, 1959 (Exhibit UU), conveying the fee simple title in 121,899.70 acres of land to the Antelope Sheep Range Company, reserves to the Ute Indian Tribe of the Uintah and Ouray Reservation, and the affiliated Ute citizens, all minerals and mineral rights in the lands.

D. *The Taylor Grazing Act*

The Act of June 28, 1934, 48 Stat. 1269, 43 U.S.C. 315 *et seq.*, the Taylor Grazing Act, provided, among other things, for the prevention of injury to the public lands by overgrazing and soil deterioration, for the orderly use, improvement and development of such lands, and for the stabilization of the livestock industry dependent upon the public range.

Executive Order 6910 (Exhibit R) was issued to effectuate the purposes of the act. This Order, dated November 26, 1934, withdrew, under the provisions of the Picket Act, as amended, all the vacant, unreserved and unappropriated lands of the public domain in certain states, including Colorado, Utah and Wyoming, and reserved the land "for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of said Act of June 28, 1934, and for conservation and development of natural resources." The withdrawal was subject to existing valid rights.

Executive Order 6910 was amended by Executive Order 7048, dated May 20, 1935, to permit the exchange of private for public lands, and to make the earlier Order applicable to "all lands within the states mentioned therein upon the cancellation or release of prior entries, selection, or claim, or upon the revocation of prior withdrawals unless expressly otherwise provided in the order of revocation" (Exhibit R). Thus, it might be argued that the withdrawal was specifically extended by the President to all of the lands previously embraced by oil shale claims that had been cancelled for any reason, including a failure to perform annual assessment work.

By Executive Order 7274 of January 14, 1936, the withdrawal was lifted as to "all lands which are now, or may hereafter be, included within grazing

districts duly established pursuant to the provisions" of the Taylor Grazing Act (Exhibit R).

No attempt has been made to determine the number of livestock operations that have been dependent over the past 30 years upon the hundred of thousands of acres of public range covered by the thousands of oil shale claims in Colorado, Utah and Wyoming that were declared null and void between 1930 and 1933.

E. *The Ickes Decision*

As noted previously, the Department of the Interior in investigating and determining the validity of the oil shale claims plastered over the public domain in Colorado, Utah and Wyoming posted notices of forfeiture on thousands of claims and instituted contests to determine the validity of thousands of claims. Between 1930 and 1933 oil shale claims covering hundreds of thousands of acres were declared null and void. All the available evidence indicates that the action of the Department went largely unheeded.[18] Most of the mining claimants who were served with contest complaints ignored them even though the complaints warned that a failure to respond would be taken as an admission of the truth of the charges asserted in the complaint and the mining claims would be declared null and void.

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[18] The number of contests decided by default in favor of the Government can be inferred from the number of contests concluded in a single year. For the fiscal year ending June 30, 1931, the Secretary of the Interior stated that "during the year 1,181 shale locations, embracing approximately 140,539 acres were declared null and void;" for fiscal year 1932 the Secretary stated that "locations number 10,918 for 1,294,500 acres were declared null and void;" and for fiscal year 1933 the statement was that "locations to the number of 11,146 for 1,448,980 acres were declared null and void" (Exhibit M).

While most of the contests were decided on the basis of the contestees' defaults, a few mining claimants had enough interest left in their oil shale claims to respond to the Government's proceedings. One such mining claimant was the Virginia-Colorado Development Corporation. The Virginia-Colorado claims were declared null and void, as were the thousands of others, on the basis of the Department of the Interior's construction of (1) Section 37 of the Mineral Leasing Act as requiring the performance of annual assessment work in order to maintain the validity of an oil shale claim, and (2) the *Krushnic* decision as holding that in the absence of a resumption of annual assessment work an oil shale claim was not maintained as required by the Mineral Leasing Act and was not a valid existing claim.

Eventually the case involving the Virginia-Colorado claims reached the Supreme Court, and in *Ickes* v. *Virginia-Colorado Development Corp.*, 295 U.S. 639, the court reversed the decision of the Department of the Interior. The court found under the admitted facts and its construction of the law that the Virginia-Colorado claims came within the exception in the Mineral Leasing Act as to valid claims existing on the date of the passage of the act, "and thereafter maintained in compliance with the laws under which initiated."

The court stated in this connection as follows:

> How could the valid claims of plaintiff be "thereafter maintained in compliance with the laws under which initiated"? Manifestly, by a resumption of work. Plaintiff was entitled to resume, and the bill alleged that plaintiff had made arrangements for resumption, and that work would have been resumed if the Department of the Interior had not intervened. Plaintiff's rights

> after resumption would have been as if "no default had occurred." Belk v. Meagher, 104 U.S. 279, 26 L. ed. 735, supra. Such a resumption would have been an act "not in derogation but in affirmance of the original location," and thereby the claim would have been "maintained." As we said in Wilbur v. United States, supra (280 U.S. p. 318, 74 L. ed. 449, 50 S. Ct. 103). "Such resumption does not *restore* a *lost* estate . . .; it preserves an existing estate."

In this view, plaintiff came directly within the exception.

The court then concluded its decision with the following language:

> We think that the Department's challenge, its adverse proceedings, and the decision set forth in the bill went beyond the authority conferred by law.

If the *Ickes* decision is construed as holding that the Department of the Interior acted beyond its jurisdiction is erroneously construing the Mineral Leasing Act and the *Krushnic* decision in discharging its duties and responsibilities of determining the validity of the rights claimed by Virginia-Colorado in the public lands, then the Department of the Interior cannot possibly administer the 460 million acres of public lands under its jurisdiction. If when a construction of law is determined to be erroneous by a court, the erroneous construction is equated to the basic jurisdiction of the Interior Department, then no one could ever rely on any action taken by the Department in administering the public lands.

If the *Ickes* decision is construed as holding that the Department of the Interior had the necessary jurisdiction to determine the validity of the claims,

but the Department's interpretation of Section 37 of the Mineral Leasing Act was erroneous and therefore there was no authority to support the action of Interior in declaring the claims null and void, then Section 37 of the Mineral Leasing Act becomes meaningless. Such a construction would ignore the purpose of the act and the announced intent of Congress that the leasing act minerals could not be disposed of under the mining laws except as to valid claims existing on the date of the act and thereafter maintained in compliance with the laws under which initiated.

The *Ickes* decision can properly be construed as holding that the decision of the Interior Department was erroneous inasmuch as Virginia-Colorado was entitled to resume its annual assessment work, it had made arrangements for the resumption, and therefore it came directly within the exception in the Mineral Leasing Act as to valid existing claims maintained in compliance with the laws under which initiated.

F. *Action Subsequent to the Ickes Decision*

As a result of the *Ickes* decision the Department of the Interior issued *The Shale Oil Company* decision dated June 24, 1935, 55 I.D. 287 (Exhibit W). This decision was issued in a case that was pending on appeal before the Office of the Secretary. The Department by this decision (1) reversed the decision of the Commissioner of the General Land Office in the case pending on appeal in view of the *Ickes* decision, (2) recalled and vacated the previous decision of the Department involving the Virginia-Colorado claims as was required in view of the court's decision in the *Ickes* case, and (3) overruled as precedent the previous decisions of the Department holding that oil

shale claims could be declared null and void because of a faliure to perform annual assessment work.

The Secretary's Office and the Office of the Commissioner also issued similar decisions on other contest cases that were pending and that had not previously been disposed of by decisions that had become final. With the exception of one instance, no action was taken by the Department of the Interior to vacate, change or modify any of the thousands of decisions that had become final with the cases being closed in the years prior to the *Ickes* decision.

The one instance was an unpublished decision dated September 3, 1935 (Exhibit Z) entitled "Motion for Rehearing" in which the Office of the Secretary at the request of a mining claimant specifically vacated a previous decision that had become final in [illegible].

In view of the fact that thousands of oil shale mining claimants had been notified that the Department of the Interior regarded their claims as nullities, and that the United States had taken possession of the land embraced within their claims for its own use and purposes, one might expect that the Department of the Interior would have been deluged with inquiries from the mining claimants (who were spread from New York to California) concerning the effect of the *Ickes* decision on the previous decisions declaring their claims null and void. Surprisingly, however, only five mining claimants corresponded with the Department between 1935 and 1944. The lack of inquiry may have been due to any of several reasons. It seems clear, however, that a major factor was a complete lack of interest in the oil shale claims that had been located some 15 years previously for speculative purposes. Another factor may have been a recognition that the Interior Department had historically refused to revitalize entries fi-

nally cancelled even though the Supreme Court subsequently ruled in another case that there was no authority to support the action taken by the Department.[19]

One of the five inquiries was answered by the Office of the Secretary in the form of the decision entitled "Motion for Rehearing" (Exhibit Z). The other inquiries were answered by letters from the Office of the Commissioner. While it does appear that the writer or writers of the answers to the inquiries in the Commissioner's Office were of the opinion that the previous decisions were null and void and, therefore, it would be unnecessary to revoke or vacate the previous decisions, the fact still remains that the Secretary of the Interior apparently shared a different opinion as evidenced by the decision entitled "Motion for Rehearing." In any event, it is important to note that the letters from the Commissioner's Office were not given any distribution and apparently were not even known of until the present proceedings were commenced.

G. *Interest in Oil Shale*

It seems proper to conclude from the appendix entitled "The Title History," the appendix entitled

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[19] See, for example *Lilly M. Kelly*, 49 L.D. 659 (1923) and *Honey Lake Valley Company et al.*, 48 L. D. 192 (1921); in *Thomas Hall*, 44 L.D. 113 (1915), the Department, at page 114, held:

> It is a well-settled doctrine that a final adjudication will not be later disturbed because of a subsequent change in the construction of the law which governed the case at the time it was originally adjudicated. This rule has been generally enforced by this Department, even in cases where the Department's construction of statutes has been declared erroneous by the Supreme Court. (Frank Larson, 23 L.D. 452; Mee v. Hughart et al., 23 L.D. 45[illegible]

"History of the Specific Lands Embraced by the Oil Shale Claims in Question," and the fact that a tremendous number of the thousands of mining claimants were not sufficiently interested in their claims to respond to the Department of the Interior contest proceedings during the 1920s and early 1930s, that the interest in oil shale lands created by the speculative fever existing prior to the Mineral Leasing Act of 1920 died almost as fast as it started. Nevertheless, some parties through the years were sufficiently interested in the lands to attempt to obtain a patent from the United States for $2.50 per acre. The parties were certainly not interested in the lands from the standpoint that they were presently valuable for mining purposes. The interest was either one of speculation, or the use of the lands for purposes other than mining.

For the 10-year period following the *Ickes* decision in 1935 through 1945 four patent applications were filed with patents subsequently being issued covering 15 oil shale claims (Exhibit 95). None of these claims had previously been declared null and void on an assessment work charge.

IV. The 1945-1960 Period

A. *The Synthetic Liquid Fuels Act*

It appears that activity in the oil shale area has always been based on pessimistic predictions as to the extent of the Nation's reserves of liquid petroleum. One of the Major reasons for the speculative boom in the location of mining claims during the four years immediately preceding the passage of the Mineral Leasing Act of February 25, 1920 was, no doubt, the ill-founded predictions of some persons, made in a time of world crisis, to the effect that the United

States was fast running out of its reserves of liquid petroleum. When later events, such as the discovery of the East Texas oil fields, proved the gross error of the predictions, interest in oil shale waned to the point of disappearing completely.

The lack of interest in oil shale was almost total until World War II again taxed the Nation's capacity to produce fuels from its sources of liquid petroleum. This led to a second round of pessimistic predictions about the reserves of liquid petroleum in the United States, predictions that caused the Government to investigate alternative sources of liquid fuels.

It should be remembered that the Director of the Geological Survey in his letters of May 23, 1916, to the Commissioner of the General Land Office (Exhibit N), recommended against the withdrawal from mineral entry of the oil shale lands in the hope that private industry would take the lead in developing the oil shale deposits. His hopes were never realized. While some individuals were willing to plaster the public domain in Colorado, Utah and Wyoming with oil shale claims, few, if any, of them made any serious effort to develop an industry based on the production of synthetic liquid fuels from oil shale. Thus, the Government, when it decided to investigate alternative sources of liquid fuels, found that it had to do what the Director of the Geological Survey hoped in 1916 private industry would do, that it, it had to perform the initial experimental work necessary to determine whether oil shale was a feasible alternative source of petroleum products.

In view of the failure of private industry to develop an oil shale industry during the 45-year period that had elapsed since the Geological Survey had first directed attention to the undeveloped oil shale deposits in Colorado, Utah and Wyoming (Exhibit

N), Congress had to include oil shale among other possible alternative sources of liquid fuel for which the Government would have to perform basic experimental work. Thus, on April 5, 1944, Congress passed the Synthetic Liquid Fuels Act, 58 Stat. 190, "Authorizing the construction and operation of demonstration plants to produce synthetic liquid fuels from coal, oil shales, agricultural and forestry products, and other substances, in order to aid the prosecution of the war, to conserve and increase the oil resources of the Nation, and for other purposes." [20]

Under the authority of this Act, the Bureau of Mines, an arm of the Department of the Interior, constructed experimental oil shale retorts and a refinery near Rifle, Colorado, and began basic experimentation in the mining and retorting of oil shale and the refining of shale oil.[21] This experimentation,

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[20] By the terms of the April 5, 1944 Synthetic Liquid Fuels Act, funds not to exceed $30,000,000.00 were authorized to be appropriated to synthetic fuel research and development over a five-year period. A 1948 amendment to the Synthetic Liquid Fuels Act extended the duration of the original act three additional years, and increased the maximum appropriation from $30,000,000.00 to $60,000,000.00 (62 Stat. 79). In 1950 the original act, as amended, was again amended, extending the life of the act from 8 to 11 years, and increasing the maximum appropriation from $60,000,000.00 to $87,600,000.00 (64 Stat. 905). A project allocation sheet prepared by the Bureau of Mines in connection with this 1950 amendment indicates that according to the Bureau's estimates concerning expenditure of the newly appropriated funds over the additional three-year period, $6,685,000.00, or roughly one-fourth of the appropriation increase, would be used on projects dealing with oil shale (Legislative History of Sept. 22, 1950 Amendment of Synthetic Liquid Fuels Act; *U.S. Code Congres. & Admin. News* 1950, p. 3892).

[21] Certain of the Bureau of Mines' facilities were constructed on the Oyler No. 4 claim (Exhibit LL). It is inconceivable that

which began in the late 1940s, ended in 1956 when Congress refused to appropriate additional funds to continue the project.

The status and accomplishments of the project at the time of its closing is indicated by the following testimony before the Senate Committee on Appropriations, Supplemental Appropriations Bill, 1956, Hearings on H.R. 7278, 84th Cong., 1st Session, page 846:

> Senator POTTER. You have a technique, do you not? Now it is a matter of cost, bringing the cost item down?
>
> Mr. CATTELL. We have been working on three different subjects; first, to develop a low cost, safe method of mining. Unless the shale can be mined at a very low cost, shale-oil production cannot be economical.
>
> The second step, after the mining, is to convert the shale to a crude shale oil. That takes what we call retorting. We have been experimenting in that direction also.
>
> The third step is to reduce that crude shale oil to marketable products. We did engineering-scale research on refining at Rifle. We are continuing to do research on a laboratory scale at Laramie on the principles of refining and the chemistry of the oils. But we went as far as we needed to go at Rifle and stopped that part of the experimentation. We felt that with the information the Bureau had developed, and with what the companies were equipped to do, that phase was finished.

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these facilities would have been constructed on the claim if the claim was valuable for and was being used for mining purposes.

We do not feel that we have finished the retorting phase. We had developed what we thought was a good mining method which gave low cost. Then the roof fell and showed us that we had not understood some of the things about that shale and that a different—a revised—method of mining must be developed. And that will take experimental mining operations to test the things we developed.

The following statements before the Senate Committee on Appropriations, Supplemental Appropriations Bill, 1956, Hearings on H.R. 7278, 84th Cong., 1st Session, page 504, shed some light on the closing of the Bureau of Mines experimental facilities:

Senator DIRKSEN. I see a comment in the House report that the Secretary of Interior had a survey team which reported that the plant should be put in standby condition, is that correct?

Senator MILLIKIN. I am very glad you asked that question. I think the whole thing was a misconceived probably well-intentioned effort to help the situation but everybody on that council was in the liquid oil business. There was not a single person there making any oil shale, not one. I think that I can generalize by saying that.

How many were on the council?

Mr. GUTHRIE. In the National Petroleum Council?

Senator MILLIKIN. Yes.

Mr. GUTHRIE. I think they had about 25 in their committee.

Senator MILLIKIN. I have been in this oil shale business since 1919. I know of my personal

> knowledge who had done work in the field and who has not.
>
> There is not one on that council, unless it would be the Union Oil Co., that has made any contribution toward the oil shale business, which is different from the petroleum business.
>
> I want to be very conservative, but it was a very nervy performance for people who were in the liquid petroleum business to come along and suggest that this potential competitor of that industry be put out of business and that the plant be mothballed. I think it was misconceived.
>
> I do not think they had any right to pose as authorities on the subject because they have contributed nothing to it.

In the spring of 1964 the Government's experimental oil shale mine and other facilities at Anvil Points near Rifle, Colorado was reactivated for research by private industry. An agreement was entered into under which the Colorado School of Mines Research Foundation, Inc. acquired a five-year lease to the Anvil Points installation. The Foundation, in turn, subsequently contracted with Socony Mobil Oil Company to perform research an Anvil Points for Socony, Humble Oil and Refining Company and other participating major oil companies.

The purpose of the research at Anvil Points is indicated by the following press release issued by Socony-Mobil Oil Company on September 14, 1964:

> Mr. Cramer said shale oil could be produced on a commercial scale only if and when it could be extracted at costs competitive with those of crude oil and other forms of energy. So far, he went on, no way has been found to achieve this, despite long research by Socony Mobil, other

companies, and the U. S. Government. The research program he heads is seeking such a breakthrough.

B. *The Multiple Mineral Development Act of 1954*

The Multiple Mineral Development Act of August 13, 1954, 68 Stat. 708, *et seq.*, 30 U.S.C. 521, *et seq.*, was enacted to resolve the conflicts between the mining laws of the United States and the Mineral Leasing Act of 1920 which had prevented the mineral development of the same tracts of the public lands from going forward under both systems. The conflicts to be resolved were explained as follows in Senate Report No. 1610, 1954 U.S. Code Cong. & Am. News, at page 3027:

> Land on which mineral locations have been made under the mining laws has not been open to leasing under the Mineral Leasing Act, and on the other hand land covered by an oil and gas lease or a permit, or an application or offer for the same, under the Mineral Leasing Act, or known to be valuable for oil and gas or other Leasing Act minerals, could not be located under the mining laws.
>
> S. 3344 would permit the development of mineral resources of the public lands, including uranium, to go forward on the same tracts of land under both systems. It would thus be a step forward in the development of the natural resources of the Nation. . . .

The act provides, among other things, (1) that mining claims can be located for metalliferous minerals on lands known to be valuable for any of the minerals covered by the 1920 leasing act, subject, however, to a reservation to the United States of all

minerals disposable under the leasing act, and (2) for a procedure whereby a lessee or applicant under the leasing act can obtain a determination as to the existence of unpatented mining claims and the validity of such claims that might conflict with the interests held or sought under the Mineral Leasing Act.

The problem of conflicts between old oil shale mining claims and oil and gas leasing under the 1920 act was discussed as follows in testimony by Clair Senior, an attorney appearing in behalf of the American Mining Congress in hearings held before the Subcommittee on Mines and Minerals of the Committee on Interior and Insular Affairs, House of Representatives, 83d Congress, 2d Session, on H.R. 8892 and 8896:

> . . . But actually one of the thinks [*sic*] that is causing the greatest difficulty in that area is this matter of these old, old claims located prior to 1920 which are still on the record without any knowledge as to whether any one claims anythink [*sic*] under them or not.
>
> It so happens that frequently you may find that the original locators would not claim something, but the alert speculator who had found their heirs, after somebody had found an oil well, would be there claiming. (page 30)
>
> * * * *
>
> May I say that one of the greatest difficulties exists in regard to claims that were located out in the area there many years ago, before the passage of the Mineral Leasing Act—let us say for the oil shale claims—hundreds of thousands of acres.
>
> On the plateaus where there are oil shale exposures, and those claims were located, placer claims could be located by 8 people right in 160

acres, with no limitation on the number of claims those same 8 people could locate.

Nothing has been done, nothing is on the record, since that claim was located in 1917.

In 1920 the Leasing Act was passed that closed the door to the location of claims for oil shale, as it closed the door for the location of claims for oil shale, it also closed the door for the forfeiture of location, because of default in performance of annual assessment of labor, and gave an immunity in respect to annual assessment labor or performance. (page 49)

C. *The Interest in Oil Shale*

For the period from 1947 through 1960 (when the last oil shale patent was issued) the Bureau of Land Management clear listed 101 patent applications and granted patents covering 753 oil shale claims in the state of Colorado (Exhibit 95). The number of oil shale claims patented covering lands in the states of Utah and Wyoming is not known. The oil shale claims were patented under the mining laws and as such were presumably valuable for mining purposes.[22]

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[22] Compare the history of oil shale with the following:

In *Chrisman* v. *Miller* (1905), 197 U.S. 313, the court in considering what is necessary to constitute a discovery of valuable mineral within the purview of the mining laws quoted in part as follows from the case of *Iron Silver Mining Company* v. *Mike and S. Gold and Silver Mining Company*, 143 U.S. 394:

> "The mineral must exist in such quantities as to justify expenditure of money for the development of the mine and the extraction of the mineral." (197 U.S. 321)

The court in the *Chrisman* case continued by stating:

> "... There must be such a discovery of mineral as gives reasonable evidence of the fact, either that there is a vein

It seems proper to assume that with the advent of the Bureau of Mines' experimental operations at Anvil Points, and experimental operations conducted by the Union Oil Company near Grand Valley, Colorado, in the early 1950s, interest again increased in the oil shale claims that had lain stagnant over the public domain in the states of Colorado, Utah, and Wyoming. As noted previously, for the 10-year period following the *Ickes* decision only 15 oil shale claims were patented in the state of Colorado.

If the 104 mining claims involved in the four consolidated cases presently under consideration and the additional 35 mining claims shown in the abstract of title covering the Bute, the Atlas and the Camp Bird claims (Exhibit 295) are typical of the history of oil shale claims and the activity (or inactivity) that has taken place with respect to the thousands of oil shale claims covering hundreds of thousands of acres

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or lode carrying the precious mineral, or, if it be claimed as placer ground, that it is valuable for such mining." (197 U.S. 323).

In *Mulkern* v. *Hammitt* (1964), 326 F.2d 896, the United States Court of Appeals, Ninth Circuit stated:

"This court, in the recent case of Adams v. United States, 9 Cir., 318 F.2d 861, dealt with this very question, and held that even though the mining claim there in litigation would, at one time, have satisfied the test, nevertheless the Government rightfully denied a patent to the claimant since, because of changed economic conditions, the claim did not presently satisfy the test." (page 898)

In *Foster* v. *Seaton* (1959), 271 F.2d 836, the United States Court of Appeals, District of Columbia Circuit commented:

". . . To allow such land to be removed from the public domain because unforseeable developments might some day make the deposit commercially feasible can hardly implement the congressional purpose in encouraging mineral development." (page 838)

of lands, the overwhelming majority of all such claims were abandoned sometime prior to 1930.[28]

A study of the appendix entitled "The Title History," the appendix entitled "The Assessment Work Contest Proceedings," and the appendix entitled "History of the Specific Lands Embraced by the Oil Shale Claims in Question" can lead to no other conclusion than that the mining claimants lost all interest in the Bute, the Atlas, the Camp Bird and the Carbon and Elizabeth claims prior to the initiation of the contest proceedings in the 1930s and that the record title holders of the remaining claims in suit lost interest after the claims had been declared null and void in the 1930s.

One aspect of the increased interest in oil shale lands between 1947 and 1960 was the practice followed by sharp speculators who sought out one or two original locators or the heirs of one or two original locators and obtained quitclaim deeds at a cost of pennies per acre and then purportedly forfeited out all other record title holders by the alleged performance of assessment work for one year. As indicated in the appendix entitled "The Title History" 100 of the 104 claims involved in the present litigation were the subject of such a practice.

No attempt has been made to ascertain how many of the thousands of oil shale claims, covering hundreds of thousands of acres, that had lain dormant from the time of location during the speculative fever

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[28] Of course, abandonment would be virtually impossible to prove inasmuch as it is not human nature to admit abandoning something that might have some value at sometime in the future. And how could one show that the claims had been abandoned by the thousands of heirs of original locators who in all probability did not even know that they had inherited an interest in oil shale claims.

of the pre-1920s, were revived by the alert speculators during the 1950s. If the abstracts of title submitted in connection with the 104 claims involved in this litigation are representative, then it would seem that the vast majority of the thousands of dormant oil shale claims (that would have remained dormant because the original locators had long since forgotten them or their heirs did not even know that they had inherited an interest) have been revitalized by the sharp speculators of the 1950s.

Not only have fractional interests in the claim been revived by searching out the heirs of one or two original locators and obtaining quit claim deeds at a cost of pennies per acre, but the speculators have allegedly obtained the dormant interests of the remaining locators or their heirs through questionable forfeiture proceedings. Under these proceedings the recent-day speculators, on the basis of their 1/8 or 1/16 fractional interest acquired as a result of their search efforts, allegedly perform $100.00 worth of assessment work on each claim for a one-year period, and then publish a notice in the local Grand Valley weekly newspaper calling on the parties who had located the claims some 30 or 40 years previously to contribute to the assessment work or lose their interest in the lands. After the original locators (who are probably deceased) fail to contribute to the assessment work, a quiet title suit is instituted, the original locators are served by publication, and a decree is obtained finding that the speculator has the entire record title interest in the claim.[24] After the

[24] In many instances the fractional interest that was acquired to support the forfeiture proceedings was an interest that had been declared null and void in the 1930s on an assessment work charge. On the basis of this interest the speculators purportedly forfeited out interests that had not

claim has been revived and the interests of all parties eliminated by the performance of annual assessment work for one year, no further assessment work is done by the speculator.

It would really be an extraordinary state of affairs to conclude that the United States, which holds the title to the lands in trust for the benefit of the people as a whole, had no jurisdiction to conduct expensive and time consuming proceedings, with due regard to the rights of everyone, in order to determine the validity of mining claims on the grounds of a failure to perform the annual assessment work as required by the Mineral Leasing Act, and thereby remove the cloud created by the thousands of claims plastered over the public domain, and at the same time recognizes that the recent-day speculators can accomplish the same thing; i.e. remove the cloud on their fractional interest by eliminating the remaining majority interests of parties who had long ago lost all interest in the claims, by performing the annual assessment work for one year, assessment work that was presumably not required, and by publishing a notice in the local weekly newspaper calling on the parties who had located the claims many years previously to contribute to the assessment work or lose their interests in the claims.

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been declared null and void in the 1930s because of a lack of proper service on the then mining claimants. If the interest was effectively declared null and void, then it would certainly seem that there was nothing to support the forfeiture proceedings, and the speculators obtained nothing by their proceedings. This would leave the interests that had not been declared null and void in the 1930s with the original locators or their heirs.

V. The 1960-1964 Period

A. *The Interest in Oil Shale*

Exhibit H shows that in the area known as the restricted Piceance Creek basin in Northwestern Colorado approximately 245,000 acres have been patented under oil shale mining claims since the first patent was issued following the Mineral Leasing Act of 1920, and that approximately 350,000 acres in this area are covered by unpatented oil shale mining claims. Exhibit H does not show the status of other oil shale lands in Northwestern Colorado. No reasonably accurate information is available concerning the number of acres covered by patented and unpatented oil shale claims in the states of Utah and Wyoming.

All of the 245,000 acres in the one area of Colorado were patented under the mining laws presumably on the basis that they were valuable for mining purposes. As yet, after some 45 years, no one has demonstrated that the oil shale lands have any value other than as a resource for possible future exploitation and development. The lands apparently have a tremendous value, as indicated by the fact that The Oil Shale Corporation paid some $600.00 per acre for 16 of the unpatented Bute claims *after* the Land Office Manager's decisions of February 1962 had been issued rejecting patent applications by reason of the old assessment work decisions (Exhibit 259—Abstract entry 318 and Exhibit J—page 4). The value is not however one of present use, but one of possible future use.

B. *The Res Judicata Decisions*

On February 16 and 23, 1962, the Manager of the Denver Land Office, Bureau of Land Manage-

ment, issued decisions rejecting 18 oil shale patent applications then pending in his office for the reason that all but five of the 266 oil shale claims for which patents were sought had been declared null and void in the early 1930s as a result of the then mining claimants' failure to maintain the claims by the performance of annual assessment work. The Manager held, in essence, that the decisions declaring the claims null and void were *res judicata*, and since the claims were no longer in existence the patent applications would have to be rejected.

The following patent applications were rejected:

C-07667 and C-09072 filed by Union Oil Company for a total of 116 claims.

C-016334, C-016671, C-029427, C-029428 and C-031342 filed by Tell Ertl for a total of 35 claims.

C-014671 filed by Weber Oil Company for a total of 31 claims.

C-0224459, C-022460, C-022461, C-028751, C-034270 and C-034271 filed by John W. Savage et al for a total of 43 claims.

C-030979 filed by Wasatch Development Company et al for a total of 19 claims.

C-018673 filed by Gabbs Exploration Company for a total of 7 claims.

C-045092 filed by Harlan H. Hugg et al for a total of 11 claims.

C-012327 filed by Pacific Oil Company for a total of 4 claims.

Appeals to the Director of the Bureau of Land Management were duly perfected by all of the patent applicants. However, the Secretary, realizing the importance of the issues involved and in an attempt to have a final departmental determination as soon as

possible, assumed jurisdiction over the cases and assigned them to the Solicitor for his consideration.

As the patent applicants' appeals were all directed to the Director of the Bureau of Land Management, the Solicitor, whose decision would be the final departmental action, gave the patent applicants the opportunity to file additional briefs. Thereafter, on April 17, 1964, the Solicitor issued a decision (71 I.D. 169) affirming the Manager's actions in all cases where there was no doubt but that the mining claimants in the 1930s had been properly served with notice of the assessment work contests, they having participated in the contest proceedings. The April 17 decision was final as to 27 claims.

As to the remaining claims, the Solicitor permitted them to submit evidence on the question of service of notice of the assessment work contests. A final decision as to that question and the disposition of the remaining claims was made by the Solicitor on July 30, 1965 (72 I.D. 313).

C. *The April 17, 1964 Instructions*

On April 17, 1964, the Secretary of the Interior wrote the Director, Bureau of Land Management (Exhibit TT) stating in part as follows with respect to oil shale claims:

> As to such cases which are not now the subject of contest or of patent application, the Bureau will, as soon as possible, initiate proceedings to test the adequacy of the discovery on which the claim is based and to assert any other ground for contest which might be justified by the facts.[25]

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[25] In *Davis* v. *Nelson* (1964) 329 F.2d 840, the United States Court of Appeals, Ninth Circuit, commented in part as follows:

[Footnote continued on page

At the time of these instructions there were two pending patent applications covering nine claims that had not previously been declared null and void on an assessment work charge. Accordingly, administrative proceedings were commenced against those nine claims charging, among other things, that the claims were not valid existing mining claims inasmuch as they had not been perfected by the discovery of a valuable mineral within the meaning of the mining laws as of February 25, 1920, and they were not presently valuable for mining purposes.

One of the basic contentions asserted by the Bureau of Land Management in the cases is that a reasonably prudent person would not from the time of the location of the claims to the present have been justified in the expenditure of his time and money in working the property with a reasonable expectation of success in developing a paying mine.[26]

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[25] [Continued]

It is our view, therefore, that the Secretary of the Interior, acting through defendant subordinate officials under the grant of authority to supervise public business on public lands, including mines, has power and authority to initiate a contest to see "that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved." Cameron v. United States (1920), 252 U.S. 450, 460, 40 S.Ct. 410, 412, 64 L.Ed. 659; Duguid v. Best, supra. Such authority is not dependent upon the assertion by the United States of some other use for or the existence of some contemplated public project involving the public lands in question. Establishment of clear title to public lands is itself sufficient justification for the action. (page 846)

[26] In *Best* v. *Humboldt Placer Mining Co.* (1963) 371 U.S. 334, the Supreme Court stated in part as follows:

The discovery must be of such a character that "a person of ordinary prudence would be justified in the further

One of the basic contentions asserted by the mining claimants is that the Department of the Interior adopted a rule in the 1920s that was subsequently followed to the effect that oil shall mining claims could be patented under the mining laws, and the rule cannot now be changed to the prejudice of the parties who have recently acquired interests in unpatented oil shale claims. In other words, the United States is estopped from properly considering and applying the mining laws to oil shale claims because of the past practices of employees of the Department of the Interior in patenting oil shale claims.

The administrative contests have not as yet gone to trial before a hearing examiner under the Administrative Procedures Act.

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expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine." Castle v. Womble, 19 L.D. 455, 457; Chrisman v. Miller, 197 U.S. 313, 322, 49 L.ed. 770, 773, 25 S. Ct. 468; Cameron v. United States, supra, (252 U.S. p. 459). A locator who does not carry his claim to patent does not lose his mineral claim, though he does take the risk that his claim will no longer support the issuance of a patent. (page 335, 336)

APPENDIX B

The Title History

I. The Bute Nos. 1 through 48.[1]

The Bute Nos. 1 through 48 oil shale placer mining claims were allegedly located in December of 1919 and January of 1920 (Exhibit 259—Abstract entries 19 through 66). Each of the claims covered ¼ of a section of land or 160 acres each. The claims covered all of Sections 7 through 18, inclusive in Township 4 South, Range 96 West. The claims were allegedly located by a group of nine individuals, with, however, only eight names being used on any one location certificate. The nine individuals and the claims on which their names appear are as follows:

Benton Cannon	1, , 3, 4, 5, 6, 7, 8, 9, , 11, 12, 13, 14, 15, 16, 17, 18, , 20, 21, 22, 23, 24, 25, 26, 27, , 29, 30, 31, 32, 33, 34, 35, 36, , 38, 39, 40, 41, 42, 43, 44, 45, , 47, 48
Charley Anderson	1, 2, 3, 4, 5, 6, 7, 8, , 10, 11, 12, 13, 14, 15, 16, 17, , 19, 20, 21, 22, 23, 24, 25, 26, , 28, 29, 30, 31, 32, 33, 34, 35, , 37, 38, 39, 40, 41, 42, 43, 44, , 46, 47, 48
Ethel McGahen	1, 2, 3, 4, 5, 6, 7, , 9, 10, 11, 12, 13, 14, 15, 16, , 18, 19, 20, 21, 22, 23, 24, 25, , 27, 28, 29, 30, 31, 32, 33, 34, , 36, 37, 38, 39, 40, 41, 42, 43, , 45, 46, 47, 48

[1] The claims involved in Civil Action 8680 are the Bute Nos. 1 through 19, 21 through 28, and 30 through 48. The Bute Nos. 20 and 29 are involved with other claims in Civil Action 9465.

J. C. Moore	1, 2, 3, 4, 5, 6, , 8, 9, 10, 11, 12, 13, 14, 15, , 17, 18, 19, 20, 21, 22, 23, 24, , 26, 27, 28, 29, 30, 31, 32, 33, , 35, 36, 37, 38, 39, 40, 41, 42, , 44, 45, 46, 47, 48
W. S. Furman	1, 2, 3, 4, 5, , 7, 8, 9, 10, 11, 12, 13, 14, , 16, 17, 18, 19, 20, 21, 22, 23, , 25, 26, 27, 28, 29, 30, 31, 32, , 34, 35, 36, 37, 38, 39, 40, 41, , 43, 44, 45, 46, 47, 48
James Murphy	1, 2, 3, 4, , 6, 7, 8, 9, 10, 11, 12, 13, , 15, 16, 17, 18, 19, 20, 21, 22, , 24, 25, 26, 27, 28, 29, 30, 31, , 33, 34, 35, 36, 37, 38, 39, 40, , 42, 43, 44, 45, 46, 47, 48
Frank Jackson	1, 2, 3, , 5, 6, 7, 8, 9, 10, 11, 12, , 14, 15, 16, 17, 18, 19, 20, 21, , 23, 24, 25, 26, 27, 28, 29, 30, , 32, 33, 34, 35, 36, 37, 38, 39, , 41, 42, 43, 44, 45, 46, 47, 48
Stephen A. Murphy	1, 2, , 4, 5, 6, 7, 8, 9, 10, 11, , 13, 14, 15, 16, 17, 18, 19, 20, , 22, 23, 24, 25, 26, 27, 28, 29, , 31, 32, 33, 34, 35, 36, 37, 38, , 40, 41, 42, 43, 44, 45, 46, 47,
Stephen A. Post	, 2, 3, 4, 5, 6, 7, 8, 9, 10, , 12, 13, 14, 15, 16, 17, 18, 19, , 21, 22, 23, 24, 25, 26, 27, 28, , 30, 31, 32, 33, 34, 35, 36, 37, , 39, 40, 41, 42, 43, 44, 45, 46, , 48

The locators claimed the discovery of a valuable mineral within the limits of each of the 48 mining

claims, and in effect asserted that the lands (7,680 acres) were valuable for mining purposes.[2]

The next entry following the location certificates that appears in the abstract of title with respect to the Bute claims is an instrument entitled "Notice in Lieu of Labor" which was filed for record on February 1, 1921 (Exhibit 259—Abstract entry 112). By this instrument one of the locators on behalf of himself and his associates claimed the benefits of a suspension of the requirement of annual assessment work on mining claims by Congress.[3]

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[2] In *Mulkern* v. *Hammitt*, 326 F.2d 896, 897, the United States Court of Appeals, Ninth Circuit, commented in part as follows:

> "The 'location' of a mineral claim upon the public lands of the United States is, in effect, a unilateral act by the locator. It indicates that, in his opinion, there are minerals upon the land which are susceptible of profitable exploration. That opinion may, of course, be, upon examination by less optimistic persons, regarded as ill-founded. If it is, the Government must have the right to clear the title and the right to the possession of its land from a useless and annoying incumbrance."

[3] By a Joint Resolution approved November 13, 1919 (41 Stat. 354) Congress provided:

> "That the provisions of section 2324 of the Revised Statutes of The United States, which requires on each mining claim located and until a patent has been issued therefor, not less than $100 worth of labor to be performed, or improvements aggregating such amount to be made each year, be, and the same is hereby suspended as to all mining claims in the United States, including Alaska, during the calendar year 1919: *Provided*, That every claimant of any such mining claim in order to obtain the benefits of this resolution shall file, or cause to be filed in the office where the location notice or certificate is recorded on or before December 31, 1919, a notice of his desire to hold said mining claim under this resolution."

No instruments were filed for record concerning the Bute claims between February 1, 1921 and July 23, 1954. In fact the owners of the claims did not even bother to record notices in lieu of annual assessment work during periods of suspension by Congress.[4]

The next entry in the abstract following the instrument recorded on February 1, 1921 is a quitclaim deed dated July 21, 1954, which was recorded on July 23, 1954. By this instrument James Murphy, apparently one of the original locators, conveyed all of his interest in the Bute claims to Tell Ertl (Exhibit 259—Abstract entry 116). At the time of the conveyance, James Murphy, as one of the parties who allegedly located 43 of the claims some 34 years previously, held the record title to a 1/8 interest in

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[4] Other provisions suspending the requirement of annual assessment work on mining claims for the periods listed below were contained in the Acts spceified:

July 1, 1932 to July 1, 1933 — Act of May 18, 1933, 48 Stat. 72.

July 1, 1933 to July 1, 1934 — Act of May 15, 1934, 48 Stat. 777.

July 1, 1934 to July 4, 1935 — Act of June 13, 1935, 49 Stat. 337.

July 1, 1935 to July 1, 1936 — Act of April 24, 1936, 49 Stat. 1238.

July 1, 1936 to July 1, 1937 — Act of June 24, 1937, 50 Stat. 306.

July 1, 1937 to July 1, 1938 — Act of June 29, 1938, 52 Stat. 1243.

July 1, 1941 to July 1, 1943 — Act of May 7, 1942, 56 Stat. 271.

July 1, 1943 to July 1, 1947 — Act of May 3, 1943, 57 Stat. 74.

July 1, 1947 to July 1, 1948 — Act of June 17, 1948, 62 Stat. 475.

July 1, 1948 to July 1, 1949 — Act of June 17, 1949, 63 Stat. 200.

claims covering 6,880 acres. Tell Ertl paid James Murphy $100.00 for his interest in the Bute claims (Exhibit J—page 6).

The next entry in the abstract involving the Bute claim is a quitclaim deed dated September 23, 1954, which was recorded on October 23, 1954. By this instrument, which was acknowledged in California, Stephen A. Murphy, apparently one of the original locators, conveyed all of his interest in the Bute claims to Tell Ertl (Exhibit 259—Abstract entry 119). At the time of this conveyance, Stephen A. Murphy, as one of the original locators held the record title to a 1/8 interest in 42 of the Bute claims. Tell Ertl paid Stephen A. Murphy $100.00 for his interest in the Bute claims (Exhibit J—page 6).

By a quitclaim deed dated December 15, 1954 and recorded on April 18, 1955, one R. L. Laurence, of San Francisco, California, who is a stranger to the title, but presumably an heir of an original locator, or an heir of an heir of an original locator, conveyed all of his interest in the Bute claims to Tell Ertl (Exhibit 259—Abstract entry 121). The interest, if any, of R. L. Laurence in the 48 Bute claims cannot be determined from the abstract. In any event Tell Ertl acquired any interest that R. L. Laurence held in the Bute claims and 18 other oil shale placer mining claims for a consideration of $100.00 (Exhibit J—page 6).

On July 2, 1955 Tell Ertl filed for record an instrument entitled "Affidavit of Annual Labor" (Exhibit 259—Abstract entry 123). This affidavit, which covered the 48 claims together with other oil shale placer mining claims alleged in part as follows:

> "That more than one hundred dollars worth of work and improvements were performed and made during the year commencing July 1, 1954,

and ending July 1, 1955, upon or for the benefit of each of the following named and described placer mining claims."

* * * *

"Such expenditures were made at the sole expense of Tell Ertl of Grand Valley, Colorado, one of the co-owners of said Mining Claims, *for the purpose of compliance with the law with reference to unpatented mining claims*, and to secure the benefits thereof for himself." (Underlining added.)

On July 15, 1955 Tell Ertl commenced the publication of a Forfeiture Notice in the Grand Valley News, a small weekly newspaper published in the town of Grand Valley, Colorado (Exhibit 259—Abstract entry 139).[5] The forfeiture notice was directed to each of the original group of nine locators and all unknown successors in interest of the original locators, with the exception of the two Murphys who had quitclaimed to Tell Ertl. The forfeiture notice was based on assessment work allegedly done for the year ending July 1, 1955, and stated in part as follows:

"Such expenditures were made in compliance with Title 30, Sec. 28, U. S. C., and if, at the expiration of 90 days after this notice, you shall fail or refuse to contribute your proportion of the expenditures required by said section as to any claim or claims with reference to which you have or claim interest as co-owner or otherwise, your respective interests in said claim or claims will become the property of Tell Ertl the co-owner who made such expenditures."

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[5] The 1966 edition of Rand McNally Road Atlas shows a population of 245 for the town of Grand Valley, Colorado.

The forfeiture proceedings appear to have been based on the 2/8 interest obtained by Tell Ertl from James Murphy and Stephen A. Murphy in the claims in which they were common locators. In other words, Tell Ertl, after obtaining a 2/8 record title interest in the Bute claims, located in the names of James Murphy and Steven A. Murphy (and a 1/8 interest in the claims, in which only one of the Murphys appeared as a locator), allegedly performed the assessment work on the claims for the one-year period ending July 1, 1955, and then proceeded to forfeit out the remaining 6/8 (or 7/8) record title interest in the claims.[6]

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[6] The dissenting opinion in the case of *Hamilton* v. *Ertl*, 360 P.2d 660, which involved forfeiture proceedings by Tell Ertl in connection with 67 oil shale placer mining claims known as the Pueblo group, the Cedar group, the Nancy group and the Helen Agnes group, reads in part as follows:

> "Thus whether the Congress so intended, it appears that today by virtue of the saving clause in the Leasing Act and the decisions in Wilbur and Ickes supra the owners of oil shale claims find it possible to hold their claims awaiting perfection of technological processes for refining which will allow oil from shale to compete with liquid petroleum, without need to perform annual assessment work, the reason being that the deposits have been withdrawn from public entry so cannot be relocated and the Government itself cannot challenge the ownership for non-performance."
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> * * * *
>
> "... In my view Ertl was a mere volunteer and a donor of his work to the benefit of all his co-owners because the work he performed did not have to be done. ..."
>
> "All of the text and case law which I have found is to the effect that in order for one co-owner to forfeit out other co-owners *there must have existed the necessity for doing the work* and if it is not necessary to do the work in order to protect the title, there is no right of forfeiture."

By a quitclaim deed dated September 27, 1955, which was recorded on November 14, 1955, one George D. Post conveyed his interest in the Bute claims and other oil shale placer mining claims to one H. A. Dutton, Jr. (Exhibit 259—Abstract entry 127). The abstract shows that George D. Post was one of the heirs of Stephen A. Post who was one of the original locators, and that Stephen A. Post died intestate on March 5, 1950, at Santa Rosa, California (Exhibit 259—Abstract entry 150).

By an affidavit dated January 13, 1956, entitled "Proof of Non-Contribution" Tell Ertl alleged that no co-owner named in the forfeiture notice had contributed to the expenditures for assessment work on the Bute claims for the year ending July 1, 1955 (Exhibit 259—Abstract entry 139).

On May 7, 1956, a quiet title decree was issued by the District Court, Rio Blanco County, Colorado, finding that Tell Ertl was the owner of all interests in the Bute placer mining claims Nos. 1 through 48 (Exhibit 259—Abstract entry 144). The quiet title action named all of the original group of nine locators with the exception of the two Murphys who had quitclaimed to Tell Ertl.[7]

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[7] The contest file for contest 11757 (Exhibit I-1) indicates the following with respect to certain of the original locators named by Tell Ertl in the forfeiture proceedings and the quiet title proceedings:

(a) That Benton Cannon died December 29, 1927, leaving a will which was filed February 24, 1928, and probated in Mesa County, Colorado, and that his heirs were his widow Evelyn Cannon, and two daughters, Eva and Helen Cannon. That Mrs. Cannon was receiving mail for herself and her two daughters in Ithaca, New York, in 1930. The will is Exhibit 260 in this proceeding and is being used by Tell Ertl in an attempt to establish that proper

On January 25, 1957, Tell Ertl conveyed all of his interest in the Bute claims, together with other oil shale placer mining claims, to Energy Resources Technology Land, Inc. (ERTL), a Colorado corporation (Exhibit 259—Abstract entry 149).

By a deed dated July 10, 1959, Energy Resources Technology Land, Inc. conveyed the Bute Nos. 33 through 48 to H. A. Dutton, Jr. (Exhibit 259—Abstract entry 178), and by an instrument dated July 13, 1959, Energy Resources Technology Land, Inc. (ERTL) obtained a conveyance from H. A. Dutton, Jr. of all of his interest in the Bute Nos. 1 through 32 and other oil shale placer mining claims (Exhibit 259—Abstract entry 177).

By a deed dated September 23, 1960, H. A. Dutton, Jr. conveyed the Bute Nos. 33 through 48 to Joe T. Juhan (Exhibit 259—Abstract entry 183).

By an instrument dated June 12, 1963, Joe T. Juhan and The Oil Shale Corporation entered into an option agreement covering the Bute Nos. 33 through 48 (Exhibit 259—Abstract entry 318), and on July 9, 1964, The Oil Shale Corporation exercised

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service was not obtained by the Government in the contest proceedings in the 1930s.

(b) That J. C. Moore had died sometime prior to 1931 and that his heirs were his widow Mrs. Harry Kelly and his minor daughter, Colleen Moore. That the widow was receiving mail for herself and her daughter in Grand Junction, Colorado, in 1931.

(c) That Ethel McGahen had married and her married name was Ethel Laurence. That Ethel McGahen Laurence was receiving mail in San Pedro, California, in 1931.

In addition, as noted previously, the abstract shows that Stephen A. Post, one of the original locators named in the forfeiture and quiet title proceedings had died in 1950 in Santa Rosa, California.

its option. The purchase price, payable to Joe T. Juhan in installments was $1,536,000 (Exhibit J—page 4).[8]

By an instrument dated September 20, 1963, Energy Resources Technology Land, Inc. and The Oil Shale Corportion entered into a lease and option arrangement covering the Bute Nos. 1 through 32 and other oil shale placer mining claims[9] (Exhibit 259—Abstract entry 319). The rental payable under this agreement to Energy Resources Technology Land, Inc. is $148,000 per annum (Exhibit J—page 4).

The only instruments shown in the abstract of title, from the time of the location of the claims, some 45 years ago, relating to annual assessment work are (1) the Notice in Lieu of Labor recorded on February 1, 1921, and (2) the Affidavit of Annual Labor recorded on July 2, 1955, by Tell Ertl as the basis for his forfeiture proceedings. No instruments re-

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[8] The Oil Shale Corporation paid $600.00 per acre for 16 of the Bute claims. Tell Ertl in 1954 obtained interests in the 48 Bute claims on which to base his forfeiture proceedings for $300 or .39¢ per acre.

[9] The other oil shale placer mining claims are the Atlas Nos. 1 through 18, The Camp Bird Nos. 1 through 20, the Liberty Bell Nos. 1 through 12, and the Tom Boy Nos. 1 through 12. All of these claims were obtained by Tell Ertl through forfeiture proceedings similar to the procedure followed by Tell Ertl with respect to the Bute Nos. 1 through 48. All of the claims were declared null and void in the 1930s for failure to perform assessment work and are the subject of pending actions to establish the validity of the claims. The Atlas Nos. 1, 2, 3, 7, 9, 10, 12, 17, and 18, all of the Camp Bird, and the Bute Nos. 1 through 19, 21 through 28, and 30 through 48 are involved in Civil Action 8680. The Atlas Nos. 4, 5, 6, 8, 11 and 13 through 16, the Bute Nos. 20 and 29, all of the Liberty Bell, and all of the Tom Boy claims are involved in Civil Action 9465.

lating to assessment work were recorded subsequent to the forfeiture proceedings. Apparently no need was seen to further volunteer the performance of annual assessment work.

II. The Atlas Nos. 1 through 18.[10]

The Atlas Nos. 1 through 18 oil shale placer mining claims were allegedly located in December of 1919 (Exhibit 259—Abstract entries 1 through 18). Each of the claims covered 1/4 of a section of land or 160 acres each. The claims covered all of Section 10, the SW¼ of Section 12, the W½ of Section 13, all of Section 14, and all of Section 15, in Township 4 South, Range 95 West. The claims were allegedly located by a group of nine individuals, with, however, only eight names being used on any one location certificate. The nine individuals and the claims on which their names appear are as follows:

W. S. Furman	1, , 3, 4, 5, 6, 7, 8, 9, 10, , 12, 13, 14, 15, 16, 17, 18
Marcedus Murphy	1, 2, , 4, 5, 6, 7, 8, 9, 10, 11, , 13, 14, 15, 16, 17, 18
Iris Campbell	1, 2, 3, , 5, 6, 7, 8, 9, 10, 11, 12, , 14, 15, 16, 17, 18
Ethel McGahen	1, 2, 3, 4, , 6, 7, 8, 9, 10, 11, 12, 13, , 15, 16, 17, 18
Emma J. Boyd	1, 2, 3, 4, 5, , 7, 8, 9, 10, 11, 12, 13, 14, , 16, 17, 18
Albert C. Coleman	1, 2, 3, 4, 5, 6, , 8, 9, 10, 11, 12, 13, 14, 15, , 17, 18
Harry N. Longwell	1, 2, 3, 4, 5, 6, 7, , 9, 10, 11, 12, 13, 14, 15, 16, , 18
Stephen A. Post	1, 2, 3, 4, 5, 6, 7, 8, , 10, 11, 12, 13, 14, 15, 16, 17,
J. C. Moore	, 2, 3, 4, 5, 6, 7, 8, 9, , 11, 12, 13, 14, 15, 16, 17, 18

Four of these original locators, Furman, McGahen, Moore and Post were also original locators of the Bute claims.

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[10] The claims involved in Civil Action 8680 are the Atlas Nos. 1, 2, 3, 7, 9, 10, 12, 17 and 18. The Atlas Nos. 4, 5, 6, 8, 11, and 13 through 16 are involved with other claims in Civil Action 9465.

The locators claimed the discovery of a valuable mineral within the limits of each of the 18 mining claims, and in effect asserted that the lands (2,880 acres) were valuable for mining purposes.

The next entry following the location certificates that appears in the abstract of title with respect to the Atlas claims is an instrument entitled "Notice in Lieu of Labor" which was filed for record on February 1, 1921 (Exhibit 259—Abstract entry 111). By this instrument one of the locators on behalf of himself and his associates claimed the benefits of a suspension by Congress of the requirement of annual assessment work on mining claims.[11]

No instruments were filed for record concerning the Atlas claims between February 1, 1921, and August 5, 1954. As was also true with regard to the Bute claims, the owners of the Atlas claims did not even bother to record notices in lieu of annual assessment work during periods of suspension by Congress.[12]

The next entry in the abstract following the instrument recorded on February 1, 1921 is a quitclaim deed dated August 3, 1954, which was recorded on August 5, 1954. By this instrument Iris C. Robinson, formerly Iris Campbell, apparently one of the original locators, conveyed all of her interest in the Atlas claims to Tell Ertl (Exhibit 259—Abstract entry 117.). At the time of the conveyance, Iris C. Robinson, as one of the parties who allegedly located

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[11] The Joint Congressional Resolution of 1919 (41 Stat. 354) providing for the suspension of the requirement of assessment work on mining claims is set forth in footnote 3 in connection with the Bute claims.

[12] Acts providing for the further suspension of assessment work on mining claims in years after 1919 are listed in footnote 4 under the Bute claims.

16 of the claims some 34 years previously, held the record title to a 1/8 interest in claims covering 2,560 acres. Tell Ertl paid Iris C. Robinson $100.00 for her interest in the Atlas claims (Exhibit J—page 6).

By a quitclaim deed dated July 28, 1954, and recorded on August 5, 1954, Marcedus Murphy, apparently one of the original locators, conveyed all of her interest in the Atlas claims to Tell Ertl (Exhibit 259—Abstract entry 118). At the time of this conveyance, Marcedus Murphy, as one of the original locators held the record title to a 1/8 interest in 16 of the Atlas claims. Tell Ertl paid Marcedus Murphy $100.00 for her interest in the Atlas claims (Exhibit J—page 6).

By a quitclaim deed dated December 15, 1954, and recorded on April 18, 1955, one R. L. Laurence, of San Francisco, California, who is a stranger to the title, but presumably an heir of an original locator, or an heir of an heir of an original locator, conveyed all of his interest in the Atlas claims to Tell Ertl (Exhibit 259—Abstract entry 121). The interest, if any, of R. L. Laurence in the 18 Atlas claims cannot be determined from the abstract. In any event Tell Ertl acquired any interest that R. L. Laurence held in the Atlas claims and in the 48 Bute claims for a consideration of $100.00 (Exhibit J—page 6).

On July 2, 1955 Tell Ertl filed for record an instrument entitled "Affidavit of Annual Labor" (Exhibit 259—Abstract entry 122). This affidavit, covering the 18 Atlas claims, alleged in language similar to the excerpts set forth in connection with the Bute claims, that during the year from July 1, 1954 to July 1, 1955 more than one hundred dollars of work had been performed upon or for the benefit of each of the 18 Atlas claims. The affidavit also alleged that these expenditures had been made at the

sole expense of Tell Ertl, one of the co-owners of the Atlas claims, "for the purpose of compliance with the law with reference to unpatented mining claims."

On July 8, 1955 Tell Ertl commenced the publication of a Forfeiture Notice in the Grand Valley News, a small weekly newspaper published in the town of Grand Valley, Colorado (Exhibit 259—Abstract entry 138). The forfeiture notice was directed to each of the original group of nine locators with the exception of Murphy and Robinson, who had quitclaimed to Tell Ertl, and to all unknown successors in interest of the original locators. In language similar to the excerpt from the forfeiture notice pertaining to the Bute claims, the publication stated Tell Ertl's intention to forfeit out any co-owners of the Atlas claims who failed to contribute their proportion of assessment work expenditures within 90 days.

The forfeiture proceedings pertaining to the Atlas claims followed the same pattern as the proceedings involving the Bute claims. After obtaining a 2/8 record title interest in the claims located in the names of Iris Campbell (Robinson) and Marcedus Murphy (and a 1/8 interest in the claims in which Campbell and Murphy were not common locators), Tell Ertl allegedly performed the assessment work on the claims for the one-year period ending July 1, 1955, and then proceeded to forfeit out the remaining 6/8 (or 7/8) record title interest in the claims.

By a quitclaim deed dated September 27, 1955 George D. Post, (apparently one of the heirs of Stephen A. Post, who was an original locator and also one of the heirs of another original locator, Emma J. Boyd) conveyed the interest that he obtained as an heir of Stephen A. Post to H. A. Dutton, Jr. This

amounted to a 3/32 interest to Dutton [13] (Exhibit 259—Abstract entry 127).

By a quitclaim deed dated November 10, 1955, one Beatrice Post, apparently the heir of W. H. Post, who was apparently one of the heirs of an original locator, Emma J. Boyd, conveyed the interest that Post obtained from Boyd and the interest that she obtained from Post to H. A. Dutton, Jr. This amounted to a 1/16 interest to Dutton [14] (Exhibit 259—Abstract entry 126).

By an affidavit entitled "Proof of Non-Contribution", dated January 13, 1956, Tell Ertl alleged that no co-owner named in the forfeiture notice had con-

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[13] Emma J. Boyd, one of the original locators named in the forfeiture proceedings, apparently died intestate on September 24, 1921, in Grand Junction, Colorado (Exhibit 259—Abstract entry 150). No administration of her estate was granted in Colorado. On May 18, 1959, the District Court, Rio Blanco County, Colorado determined that Emma J. Boyd died possessed of a 1/8 interest in the Atlas claims and that her heirs at law were Stephen A. Post and W. H. Post with each being entitled to a ½ interest.

Stephen A. Post one of the original locators and an heir of Emma J. Boyd apparently died intestate on March 5, 1950, at Santa Rosa, California (Exhibit 259—Abstract entry 150). No administration of his estate was granted in Colorado. On May 18, 1959, the District Court, Rio Blanco County, Colorado, determined that Stephen A. Post died possessed of a 3/16 interest in the Atlas claims and that his sole and only heirs at law were Lillian Post and George D. Post with each being entitled to a ½ interest.

[14] W. H. Post apparently died leaving a will on February 10, 1938 (Exhibit 259—Abstract entry 151). The will was probated in Mesa County, Colorado in 1938 and filed for record in Rio Blanco County in 1959. By the terms of this will, the widow Beatrice W. Post acquired any interest which W. H. Post might have had in the Atlas claims as an heir of Emma J. Boyd.

tributed to the expenditures for assessment work for the year ending July 1, 1955 (Exhibit 259—Abstract entry 138).

On May 7, 1956 a quiet title decree was issued by the District Court, Rio Blanco County, Colorado, finding that Tell Ertl was the owner of all interests in the Atlas placer mining claims Nos. 1 through 18 (Exhibit 259—Abstract entry 144). The quiet title action named all of the original group of nine locators of the Atlas claims with the exception of Iris Robinson and Marcedus Murphy, who had quitclaimed to Tell Ertl. It also named H. A. Dutton, Jr., as well as all unknown persons who claimed any interest in the subject matter of the action.[15]

On January 25, 1957, Tell Ertl conveyed all of his interest in the Atlas claims, together with his interest in the Bute claims and in other oil shale placer mining claims, to Energy Resources Technology Land, Inc. (ERTL), a Colorado corporation (Exhibit 259—Abstract entry 149).

By an instrument dated July 13, 1959, Energy Resources Technology Land, Inc. obtained a conveyance from H. A. Dutton, Jr. of all of his interest in the Atlas Nos. 1 through 18 and other oil shale placer mining claims (Exhibit 259—Abstract entry 177); and by a deed dated July 10, 1959, Energy Resources

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[15] Dutton's efforts in locating the heirs of original locators, in obtaining conveyances and in placing the necessary estate procedings on record were apparently wasted inasmuch as the interests of the original locators obtained by Dutton were forfeited out by Tell Ertl.

Again, as with the Bute claims the contest files for Contest 11759 (Exhibit I-2) involving the Atlas claims contained pertinent information as to the existence and whereabouts of the original locators and heirs of original locators which was ignored by Tell Ertl in his forfeiture and quiet title proceedings directed only to the original locators.

Technology Land, Inc. conveyed the Bute Nos. 33 through 48 claims to H. A. Dutton, Jr. (Exhibit 259—Abstract entry 178).

By an instrument dated September 20, 1963 Energy Resources Technology Land, Inc. and The Oil Shale Corporation entered into a lease and option arrangement covering the Atlas Nos. 1 through 18 and other oil shale placer mining claims [16] (Exhibit 259—Abstract entry 319). The rental payable under this agreement to Energy Resources Technology Land, Inc. is $148,000 per annum (Exhibit J—page 4).

As is also true, as previously stated, with respect to the Bute claims, the only instruments shown in the abstract of title, from the time of the location of the Atlas claims, some 45 years ago, relating to annual assessment work are (1) the Notice in Lieu of Labor recorded on February 1, 1921 and (2) the Affidavit of Annual Labor recorded on July 2, 1955 by Tell Ertl as the basis for his forfeiture proceedings. No instruments relating to assessment work were recorded subsequent to the forfeiture proceedings. Apparently no need was felt to further volunteer the performance of annual assessment work.

III. The Camp Bird Nos. 1 through 20.[17]

The Camp Bird Nos. 1 through 20 oil shale placer mining claims were allegedly located in January of 1920 (Exhibit 259—Abstract entries 67 through 86). Each of the mining claims covered 1/4 of a section of land or 160 acres each. The claims covered the W½ and SE¼ of Section 2, all of Section 3, all of

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[16] All of the claims involved in the conveyance are set forth in footnote 9 in connection with the Bute claims.

[17] All of the Camp Bird claims are involved in Civil Action 8680.

Section 4, all of Section 9, all of Section 16, and the SE¼ of Section 17, in Township 4 South, Range 95 West. The claims were allegedly located by Leroy C. Albright, J. E. Billings, John E. Lowe, J. C. Moore, Stephen A. Post, Charley Anderson, Emma J. Boyd, and Charles W. Reed. Two of these original locators, Boyd and Post, were also original locators on most of the 18 Atlas claims. Three of these original locators, Post, Moore, and Anderson, were also original locators on most of the 48 Bute claims.

The locators claimed the discovery of a valuable mineral within the limits of each of the 20 mining claims, and in effect asserted that the lands (3,200 acres) were valuable for mining purposes.

The locators of the Camp Bird claims failed to file any certificate in lieu of annual labor to take advantage of the 1919 Congressional suspension of the requirement of performing annual assessment work on mining claims as was done with respect to the Bute and Atlas claims.[18] Nor were any certificates filed with respect to any of the later Congressional suspensions of the assessment work requirement.[19]

After the filing of the location certificates on January 9, 1920, no instruments were filed for record concerning the Camp Bird claims until November 14, 1955.

By a quitclaim deed dated November 10, 1955, which was recorded on November 14, 1955, Beatrice Post, the heir of W. H. Post, who was one of the heirs of Emma J. Boyd, an original locator, conveyed the interest that (W. H.) Post obtained from Boyd

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[18] The Joint Resolution approved November 13, 1919, by Congress (41 Stat. 354) is set forth in footnote 3, *supra*.

[19] Acts providing for the suspension by Congress of the annual assessment work requirement on mining claims are set forth in footnote 4, *supra*.

and the interest that she (Beatrice Post) obtained from Post, to H. A. Dutton, Jr. (Exhibit 259—Abstract entry 126), giving Dutton a 1/16 interest in 3,200 acres.[20]

By a quitclaim deed dated September 27, 1955, which was recorded on November 14, 1955, George D. Post, one of the heirs of Stephen A. Post, who was an original locator and one of the heirs of Emma J. Boyd, another original locator, conveyed the interest that George Post obtained as an heir of Stephen Post to H. A. Dutton, Jr. (Exhibit 259—Abstract entry 127), giving Dutton a 3/32 interest in 3,200 acres.[21]

By a quitclaim deed dated February 20, 1956, and recorded March 14, 1956, R. C. Albright, allegedly the son and sole heir of Leroy C. Albright, an origi-

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[20] Emma J. Boyd apparently died intestate on September 29, 1921, in Grand Junction, Colorado (Exhibit 259—Abstract entry 150). No administration of her estate was granted in Colorado. On May 18, 1959, the District Court, Rio Blanco County, Colorado, determined that Emma J. Boyd died possessed of a 1/8 interest in the Camp Bird claims and that her heirs at law were W. H. Post and Stephen A. Post with each being entitled to a 1/2 interest.

W. H. Post apparently died leaving a will on February 10, 1938 (Exhibit 259—Abstract entry 151). The will was probated in Mesa County, Colorado, in 1938, but was not filed for record in Rio Blanco County until 1959. The widow Beatrice W. Post acquired any interest he might have had in the Camp Bird claims.

[21] Stephen A. Post apparently died intestate on March 5, 1950, at Santa Rosa, California (Exhibit 259—Abstract entry 150). No administration of his estate was granted in Colorado. On May 18, 1959, the District Court, Rio Blanco County, Colorado, determined that Stephen A. Post died possessed of a 3/16 interest in the Camp Bird claims, and that his sole and only heirs at law were Lilliam Post and George D. Post with each being entitled to a 1/2 interest.

nal locator, conveyed all of his interest in the Camp Bird claims to Tell Ertl (Exhibit 259—Abstract entry 141). Tell Ertl paid R. C. Albright $100.00 for his interest in the Camp Bird claims (Exhibit J—page 6).

By a quitclaim deed dated April 12, 1956, and recorded April 18, 1956, Verna C. Reed, apparently the widow of Charles W. Reed, an original locator, conveyed all of her interest in the Camp Bird claims to Tell Ertl for $100.00 (Exhibit 259—Abstract entry 142, Exhibit J—page 6)[22]

By a quitclaim deed dated April 19, 1956, and recorded April 30, 1956, Iva M. Milne (formerly Iva M. Lowe) and Charles E. Lowe, allegedly the son and heir of John E. Lowe, an original locator, conveyed all of their interest in the Camp Bird claims to Tell Ertl for $100.00 (Exhibit 259—Abstract entry 143, Exhibit J—page 6).

By a quitclaim deed dated April 19, 1956, and recorded April 30, 1956, Mrs. J. E. Billings, allegedly the widow and heir of J. E. Billings, an original locator, conveyed all of her interest in the Camp Bird claims to Tell Ertl for $100.00 (Exhibit 259—Abstract entry 137, Exhibit J—page 6).

On June 7, 1956, Tell Ertl filed for record an instrument entitled "Affidavit of Annual Labor" (Exhibit 259—Abstract entry 145). This affidavit, covering the 20 Camp Bird claims, alleged in language similar to that used in affidavits filed in connection with the Atlas and Bute claims, that during the year

[22] Charles W. Reed, one of the original locators, apparently died leaving a will on May 31, 1938 (Exhibit 259—Abstract entry 152). The will was probated in Mesa County, Colorado, in 1938, but was not filed for record in Rio Blanco County until 1957. By the terms of this will Reed's widow, Verna C. Reed, acquired any interest he might have had in the Camp Bird claims.

from July 1, 1955 to June 30, 1956, more than one hundred dollars worth of work had been performed upon or for the benefit of each of the 20 Camp Bird claims. The affidavit also alleged that these expenditures had been made at the sole expense of Tell Ertl, one of the co-owners of the Camp Bird claims, "for the purpose of complying with the law with reference to unpatented mining claims."

On August 24, 1956, Tell Ertl commenced the publication of a Forfeiture Notice in the Grand Valley News, a small weekly newspaper published in the town of Grand Valley, Colorado (Exhibit 259—Abstract entry 147). The forfeiture notice was directed to each of the original group of eight locators with the exception of Charles W. Reed, and in addition to H. A. Dutton, Jr., and to all unknown successors in interest of the original locators. In language similar to that used in the forfeiture notices pertaining to the Bute and Atlas claims, the publication stated Tell Ertl's intention to forfeit out any co-owners of the Camp Bird claims who failed to contribute their proportion of assessment work expenditures within 90 days.

The forfeiture proceedings pertaining to the Camp Bird claims followed a pattern similar to the proceedings involving the Bute and Atlas claims. After obtaining from the alleged heirs of original locators an apparent 4/8 record title interest in claims covering 3,200 acres by a total expenditure of $400.00 Tell Ertl allegedly performed at least $100.00 worth of assessment work on each of the 20 claims during the one-year period ending June 30, 1956, and then proceeded to forfeit out others holding record title interests in the claims.

According to an affidavit dated February 25, 1957, however, one of the record title holders, H. A. Dut-

ton, Jr., did answer the forfeiture notice within 90 days. Dutton, who had obtained a record 5/32 interest in the Camp Bird claims by virtue of two quitclaim deeds executed in 1955 by the heirs of original locators, contributed a proportion of the alleged assessment work expenditures and retained his title interest in the claims (Exhibit 259—Abstract entry 147).

On May 22, 1957, a quiet title decree was issued by the District Court, Rio Blanco County, Colorado, finding that Tell Ertl was the owner of an undivided 3/4 interest and H. A. Dutton, Jr. the owner of an undivided 1/4 interest in the Camp Bird placer mining claims (Exhibit 259—Abstract entry 148). The quiet title action named all of the original group of eight locators of the Camp Bird claims except Charles W. Reed, as well as all unknown persons who claimed any interest in the subject matter of the action.

On January 25, 1957, Tell Ertl conveyed all of his interest in the Camp Bird claims, together with his interest in the Bute claims, the Atlas claims, and other oil shale placer mining claims, to Energy Resources Technology Land, Inc. (ERTL), a Colorado corporation (Exhibit 259—Abstract entry 149).

By an instrument dated July 13, 1959, Energy Resources Technology Land, Inc. obtained a conveyance from H. A. Dutton, Jr. of all of his interest in the Camp Bird Nos. 1 through 20 and other oil shale placer mining claims (Exhibit 259—Abstract entry 177); and by a deed dated July 10, 1959, Energy Resources Technology Land, Inc. conveyed the Bute Nos. 33 through 48 claims to H. A. Dutton, Jr. (Exhibit 259—Abstract entry 178).

By an instrument dated September 20, 1963, Energy Resources Technology Land, Inc. and The Oil Shale Corporation entered into a lease and option

arrangement covering the Camp Bird Nos. 1 through 20 and other oil shale placer mining claims[23] (Exhibit 259—Abstract entry 319). The rental payable under this agreement to Energy Resources Technology Land, Inc. is $148,000 per annum (Exhibit J—page 4).

The only instrument shown in the abstract of title, from the time of the location of the Camp Bird claims, some 45 years ago, relating to annual assessment work is the Affidavit of Annual Labor recorded on June 27, 1956, by Tell Ertl as the basis for his forfeiture proceedings. No instruments relating to assessment work were recorded subsequent to the forfeiture proceedings. Apparently no need was seen to further volunteer the performance of annual assessment work.

IV. The Carbon Nos. 1 through 8 and the Elizabeth Nos. 1 through 12.[24]

The Carbon Nos. 1 through 8 oil shale placer mining claims were allegedly located on April 10, 1918 (Exhibit G—Abstract entries 1 through 8). Each of the claims covered 1/4 of a section of land or 160 acres each. The eight claims covered all of Sections 32 and 33, Township 4 South, Range 97 West. The claims were allegedly located by F. N. Juhan, Elizabeth Juhan, Joe Juhan, E. E. Fordham, Winnifred Fordham, Genevieve Fordham and Jack Montgomery.

The Elizabeth Nos. 1 through 8 oil shale placer mining claims were allegedly located on May 18,

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[23] All of the claims involved in the lease and option arrangement are set forth in footnote 9, *supra*.

[24] The claims involved in Civil Action 8685 are the Carbon Nos. 1 through 5 and the Elizabeth Nos. 1, 2, and 4 through 12.

1918 (Exhibit G—Abstract entries 9 through 19). Each of the claims covered 1/4 of a section of land, the eight claims covering all of sections 35 and 36, Township 4 South, Range 97 West. The eight claims were allegedly located by F. N. Juhan, Elizabeth Juhan, Joe T. Juhan, James E. Ford, Doris Ford, Mabel M. Ford, and Georgia May Williams.

The Elizabeth Nos. 9 through 12 oil shale placer mining claims were allegedly located on May 18, 1918. Each of the claims covered 1/4 of a section of land, with the four claims covering all of Section 34, Township 4 South, Range 97 West. The four claims were allegedly located by F. N. Juhan, Elizabeth Juhan, Joe T. Juhan, E. E. Fordham, Winnifred Fordham, Genevieve Fordham, James E. Ford and Mabel M. Ford.

The locators of the Carbon and Elizabeth claims claimed the discovery of a valuable mineral within the limits of each of the eight Carbon and twelve Elizabeth mining claims, and in effect asserted that the lands (3,200 acres) were valuable for mining purposes.

By a quitclaim deed dated April 25, 1918 (15 days after the claims were located) and recorded January 27, 1919, seven of the locators of the Carbon Nos. 1 through 8 conveyed all their interests in the claims to the eighth locator, E. E. Fordham (Exhibit C—Abstract entry 24).

By a quitclaim deed dated August 27, 1918 and recorded January 27, 1919, seven of the locators of the Elizabeth Nos. 1 through 8 conveyed all of their interests in the claims to the eighth locator, F. N. Juhan (Exhibit G—Abstract entry 23).

By quitclaim deeds executed during January of 1919, all recorded on February 4, 1919, seven of the locators of the Elizabeth Nos. 9 through 12 conveyed

all of their interests in the claims to the eighth locator, E. E. Fordham (Exhibit G—Abstract entries 25 through 27).

By quitclaim deeds dated August 30, 1918, recorded January 14, 1919, and again by quitclaim deeds dated May 24 and 25, 1921, recorded June 23, 1922, E. E. Fordham and F. N. Juhan conveyed all of their interests in the Carbon Nos. 1 through 8 and Elizabeth Nos. 1 through 12 claims to H. C. Wolf (Exhibit G—Abstract entries 21, 22, 35, 36). This gave Wolf the entire record title interest in the 20 claims.

On December 26, 1919, H. C. Wolf filed for record a "Notice in Lieu of Annual Labor" with respect to the Carbon and Elizabeth claims, stating his intention to claim the benefits of a joint resolution of Congress suspending the requirement of annual assessment work on mining claims for the year 1919 (Exhibit G—Abstract 31).[25]

By a quitclaim deed dated December 18, 1920, recorded January 3, 1921, and again by a quitclaim deed dated May 31, 1921, recorded June 23, 1922, H. C. Wolf conveyed an undivided 81/100 interest in the Carbon and Elizabeth claims to L. Z. Harrison (Exhibit G—Abstract entries 32, 37).

On July 1, 1921, H. C. Wolf and L. Z. Harrison filed for record a "Notice of Intention to Hold Mining Claims" with respect to the Carbon and Elizabeth claims (Exhibit G—Abstract entry 33).

On July 1, 1921, Joe T. Juhan filed for record an "Affidavit of Labor and Improvements" with respect

[25] The Joint Congressional Resolution of 1919 (41 Stat. 354) providing for the suspension of the requirement of annual assessment work on mining claims is set forth in footnote 3, *supra*. Acts providing for the further suspension of assessment work on mining claims in years after 1919 are listed in footnote 4, *supra*.

to the Carbon and Elizabeth claims for the year ending December 31, 1920 (Exhibit G—Abstract entry 34).

By a quitclaim deed dated June 15, 1922, recorded June 23, 1922, L. Z. Harrison conveyed an undivided 1/3 interest in an undivided 81/100 interest in the Carbon and Elizabeth claims to Joseph Umpleby (Exhibit G—Abstract entry 38).

By a quitclaim deed dated June 16, 1922, recorded June 23, 1922, Joseph Umpleby conveyed an undivided 1/2 interest in an undivided 1/3 interest in an undivided 81/100 interest in the Carbon and Elizabeth claims to A. F. Keene (Exhibit G—Abstract entry 39).

On June 30, 1922, an "Affidavit of Labor" for the year ending July 1, 1922, pertaining to the Carbon and Elizabeth claims was filed for record. The affidavit stated that the required expenditures of at least $100.00 on each of the twenty claims had been made by or at the expense of H. C. Wolf and L. Z. Harrison (Exhibit G—Abstract entry 40).

On October 27, 1922, an affidavit of labor was filed for record stating that the required annual expenditures had been made on each of the twenty Carbon and Elizabeth claims. The expenditures, by or at the expense of H. C. Wolf, were allegedly made for the year ending December 31, 1920. This affidavit was stated to be a duplicate of a statement dated December 31, 1920, apparently never recorded (Exhibit G—Abstract entry 41).

By a quitclaim deed dated May 21, 1923, recorded May 26, 1923, L. Z. Harrison conveyed an undivided 27/100 interest in the Carbon and Elizabeth claims to Leon Levy and Sam Levy (Exhibit G—Abstract entry 42).

On July 5, 1923, an affidavit of labor for the year ending July 1, 1923 was filed for record stating that the required annual expenditures, by or at the expense of H. C. Wolf and L. Z. Harrison, had been made on each of the twenty Carbon and Elizabeth claims (Exhibit G—Abstract entry 43).

A similar affidavit of labor was filed for record on June 30, 1924. This affidavit stated in part, "Such expenditure made by or at the expense of H. C. Wolf, L. Z. Harrison and Dr. J. B. Umpleby of Oklahoma City, Oklahoma, and Leon Levy, Sam Levy and Amor F. Keene of New York City, being owners of said claims." (Exhibit G—Abstract entry 44).

On January 8, 1925 affidavits of labor pertaining to the period from July 1, 1924, to December 31, 1925 were filed for record, covering all of the Carbon and Elizabeth claims (Exhibit G—Abstract entries 45, 46).

On January 9, 1926, a Register's Final Certificate covering the Carbon Nos. 5 through 8 claims, which included all of Section 32, Township 4 South, Range 97 West, was issued to H. C. Wolf, L. Z. Harrison, Leon Levy, Sam Levy, Joseph B. Umpleby, and A. F. Keene (Exhibit G—Abstract entry 47).[26]

An affidavit of labor was filed for record on July 2, 1926, alleging that $100.00 worth of assessment work had been performed for the year 1925 on each of the Carbon Nos. 1 through 4 and the Elizabeth

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[26] A patent application was filed in 1925 seeking a patent to the Carbon Nos. 5, 6, 7 and 8. The Carbon Nos. 7 and 8 were patented on June 23, 1932. The Carbon No. 6 was declared null and void for lack of a valid discovery and the patent application was rejected as to the Carbon 5 inasmuch as it was not contiguous to the remaining claims covered by the patent application. The Carbon Nos. 5 and 6 are before the court in Civil Act 8156.

Nos. 1 through 12 claims (Exhibit G—Abstract entry 48).

A tax sale certificate was issued to Garfield County, Colorado on December 14, 1927, covering all of Section 32, Township 4 South, Range 97 West; these were the same lands covered by the Register's Final Certificate issued on January 9, 1926, the Carbon Nos. 5 through 8 claims (Exhibit G—Abstract entry 49).

On June 23, 1932, a mineral patent covering the Carbon Nos. 7 and 8 claims, which included the S½ of Section 32, Township 4 South, Range 97 west, was issued to H. C. Wolf, L. Z. Harrison, Leon Levy, Sam Levy, Joseph B. Umpleby and A. F. Keene (Exhibit G—Abstract entry 58). This patent was filed for record on June 7, 1937.

By a Treasurer's Deed dated and recorded March 29, 1940, Garfield County conveyed all of Section 32, Township 4 South, Range 97 West to R. F. Magor, Jr. for the sum of $500.00 "which sum covers the taxes, interest and costs and subsequent taxes on said property for the years 1927 to 1937 (Exhibit G—Abstract entry 59).[27]

Following the issuance of the Garfield County treasurer's deed, various conveyances were made through the years covering the S½ of Section 32, Township 4 South, Range 97 West, the lands covered by the mineral patent issued for the Carbon Nos. 7 and 8 claims (Exhibit G—Abstract entries 62 through 80).

By two quitclaim deeds acknowledged in California dated May 27, 1957, and filed for record on June 8, 1957, Mrs. B. M. Wolf, also known as Mrs. H. Comer

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[27] Apparently the mining claimants were not even sufficiently interested in the two claims that had been patented to redeem the lands from the county.

Wolf and Mrs. H. C. Wolf (allegedly the surviving spouse and only heir at law of H. C. Wolf) conveyed the Carbon Nos. 1 through 8 and Elizabeth Nos. 1 through 12 claims to Wasatch Development Company, a Colorado corporation (Exhibit G—Abstract entries 81 and 82).

At the time of this conveyance, and for the period from 1923 to 1957 the record title to the unpatented Carbon and Elizabeth claims was as follows: H. C. Wolf an undivided 19/100, L. Z. Harrison an undivided 27/100, J. P. Umpleby an undivided 13½/100, A. F. Keene an undivided 13½/100, Leon Levy and Sam Levy an undivided 27/100.

On July 19, 1957, Wasatch Development Company through its agent and attorney-in-fact, Edward N. Juhan, commenced publication of a Forfeiture Notice in the Grand Valley News, a small weekly newspaper published in the town of Grand Valley, Colorado (Exhibit G—Abstract entry 85). The forfeiture notice was directed to H. C. Wolf, L. Z. Harrison, Joseph Umpleby, A. F. Keene, Leon Levy, Sam Levy and all unknown persons claiming any interest in the Carbon and Elizabeth mining claims. It provided in part as follows:

> You are hereby notified that Wasatch Development Company, a Colorado corporation, has expended, during the fiscal year beginning July 1, 1956, and ending July 1, 1957, in excess of one hundred dollars in labor and improvements for the benefit of each of the following named mining claims. . . .
>
> You are further notified *that said expenditure for labor and improvements was made in order to hold said claims under the provisions of U.S.C. Title 30 Section 28* and any amendments hereto,

> concerning annual assessment work upon mining claims being the amount required to hold said placer mining claim for the period ending on the first day of July, 1957. . . . And you and each of you, are hereby further notified that if within ninety days after this notice by publication, you or any one of you fail or refuse to contribute your proportion of such expenditure as a co-owner in such claim or claims as each of you may now hold an interest, such interest, and each of your interests, in said claims shall be forfeited to and become the property of the subscriber hereof. . . . (underlining added)

On December 29, 1958, the District Court, Garfield County, Colorado, issued a decree on a petition of Wasatch Development Company for the determination of interests in property of H. C. Wolf. The court found that Wolf died intestate in October of 1951 at Sylacauga, Alabama, that his sole and only heir was Mrs. H. C. Wolf and that Wasatch Development Company was the owner of the Carbon Nos. 1 through 8 and Elizabeth Nos. 1 through 12 claims by conveyance from said heir (Exhibit G—Abstract entry 91).

On April 30, 1959, Edward N. Juhan filed for Wasatch Development Company an affidavit entitled "Proof of Non-Contribution" stating that with respect to the Carbon and Elizabeth claims "all persons named in the Forfeiture Notice (except Joseph Umpleby) wholly failed to comply with the demand contained in said notice." (Exhibit G—Abstract entry 97).

On May 1, 1959, the District Court, Garfield County, Colorado issued a quiet title decree determining that Wasatch Development Company was the owner of an undivided 86½/100 interest and Joseph

Umpleby the owner of an undivided 13½/100 interest in the unpatented Carbon and Elizabeth mining claims, being the Carbon Nos. 1 through 6 and the Elizabeth Nos. 1 through 12 (Exhibit G—Abstract entry 98).

No affidavits of assessment work or notices of intention to claim the benefits of suspension of assessment work requirements were filed with respect to the Carbon and Elizabeth claim between July of 1926 and December of 1957. No assessment work instruments were filed after December of 1957 and prior to the filing of the patent application covering the Carbon and Elizabeth claims on September 8, 1959. Thus the only assessment work instrument that was filed subsequent to July of 1926 was the one filed in connection with the forfeiture proceedings by which Wasatch Development Company gained control of all interests in the unpatented claims except the interest of Joseph Umpleby.

V. The Southwest, Northwest, Northeast and Southeast Claims.[25]

The Southwest, Northwest, Northeast and Southeast oil shale placer mining claims were allegedly located on July 2, 1918 (Exhibit D—Abstract entries 27 through 30).

The four claims covered all of Section 27, with the exception of the SE¼NW¼ and the NE¼SW¼, Township 7 South, Range 98 West. The alleged locators of the claims were B. T. Napier, Robert Eaton, J. L. Armstrong, Luther Armstrong, W. H. Farnum, Hiram W. Smith, Morgan McCann, and Mark Love.

The locators claimed the discovery of a valuable mineral within the limits of each of the four mining

[25] The Northwest, Northeast, and Southeast claims are involved in Civil Action 8691.

claims, and in effect asserted that the lands (560 acres) were valuable for mining purposes.

B. T. Napier one of the original locators, died on March 12, 1919, and by a decree of the Garfield County Court dated September 25, 1920, his undivided 1/8 interest in the claims passed to Carrie St. Clair Napier (1/2 of 1/8), B. T. Napier, Jr. (1/4 of 1/8), and Clair Napier (1/4 of 1/8) (Exhibit D—Abstract entry 48).

By a mining deed dated and recorded June 17, 1921, Hiram W. Smith, one of the original locators, conveyed his undivided 1/8 interest in the four claims to C. R. McCarthy for a recited consideration of $350.00 (Exhibit D—Abstract entry 33).

By a quitclaim deed dated May 6, 1922, but not recorded until February 14, 1950, B. T. Napier conveyed his undivided 1/4 interest in the real estate of his father, B. T. Napier, Sr., to Carrie St. Clair Napier, for a recited consideration of $300.00 (Exhibit D—Abstract entry 49).

By a quitclaim deed dated December 5, 1925, recorded December 23, 1925, J. L. Armstrong, one of the original locators, conveyed his undivided 1/8 interest in the four claims to Elenor Armstrong (Exhibit D—Abstract entry 40).

Robert Eaton, one of the original locators, died on February 10, 1937, and under his will, not probated until 1952, his undivided 1/8 interest in the four claims passed to Mary E. Peck and Margaret E. Jones as devisees and legatees under the will as drawn in 1909 (Exhibit D—Abstract entry 57).

Carrie St. Clair Napier died on November 18, 1950, and under her will her 3/32 interest in the four mining claims passed in equal proportions to B. T. Napier, Jr. and Clair Napier Catlin. The mining claims were not specifically mentioned in the will

although other real property was mentioned (Exhibit D—Abstract entry 50).[29]

By a quitclaim deed dated May 2, 1952, recorded January 27, 1953, Luther Armstrong, one of the original locators in 1918, conveyed his undivided 1/8 interest in the four claims to John W. Savage and Joan L. Savage for a consideration of $200.00 (Exhibit D—Abstract entry 52, Exhibit E—page 1).[30]

By a quitclaim deed dated March 3, 1953, recorded March 19, 1953, and acknowledged in Nevada, Elinor Armstrong (who had obtained her interest in 1925) conveyed her undivided 1/8 interest in the four claims to John W. Savage and Joan L. Savage for a consideration of $200.00 (Exhibit D—Abstract entry 53; Exhibit E—page 1).

By a quitclaim deed dated April 11, 1955, recorded April 27, 1955, W. H. Farnum, one of the original locators in 1918, conveyed his undivided 1/8 interest in the four claims to Maude B. Farnum (Exhibit D—Abstract entry 54).

By a quitclaim deed dated December 3, 1955, recorded January 7, 1956, John W. Savage conveyed his interests in the four claims to Grace A. Savage (Exhibit D—Abstract entry 56).

At this time record title to the four claims was as follows: Morgan McCann, an original locator (1/8); Mark Love, an original locator (1/8); Grace A. Savage (1/8); Maude B. Farnum (1/8); Joan L. Savage (1/8); C. R. McCarthy (1/8); Mary E. Peck (1/16); Margaret E. Jones (1/16); Clair Napier Catlin (5/64); and B. T. Napier, Jr. (3/64).

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[29] The abstract does not indicate that any inheritance tax receipts or releases were ever obtained with respect to the four mining claims.

[30] For the 27-year period between 1925 and 1952, no conveyances affecting the claims were made.

On July 15, 1955, Maude B. Farnum, B. T. Napier, Jr, Clair Napier Catlin and Frankie C. McCarthy (presumably an heir of C. R. McCarthy, but actually a stranger to the title) commenced publication of a Forfeiture Notice in the Grand Valley News, a small weekly newspaper published in the town of Grand Valley, Colorado (Exhibit D—Abstract entry 58). The publication stated that during the year ending June 30, 1955, more than $100.00 worth of assessment work or expenditures had been performed on each of the four claims, and that any co-owners of the claims who failed to contribute their proportion of the expenditures within 90 days would be forfeited out.

On July 5, 1956, an affidavit was filed to the effect that no co-owner named in the forfeiture notice, with the exception of Joan L. Savage, Grace A. Savage, Mary E. Ellis (Peck) and Margaret E. Jones had contributed to the assessment work that had allegedly been done for the year ending June 30, 1955 (Exhibit D—Abstract entry 58).

By a quitclaim deed dated April 9, 1957, recorded April 27, 1957, and acknowledged partially in Colorado and partially in California, Mary E. Ellis (Peck) and Margaret E. Jones conveyed their interests in the four claims to William H. Farnum, Jr. and John R. Farnum for a consideration of $500.00 (Exhibit D—Abstract entry 60; Exhibit E—page 1).

On December 4, 1957, a judgment and decree was entered by the District Court, Garfield County, Colorado determining the ownership of the four claims to be as follows: Maude B. Farnum, an undivided 3/16; Frankie C. McCarthy, an undivided 3/16 (McCarthy, presumably an heir of C. R. McCarthy, was still a stranger to the title); B. T. Napier, Jr., an undivided 3/32; Clair Napier Catlin, an undivided

3/32; William H. Farnum, Jr., an undivided 3/32; John R. Farnum, an undivided 3/32; Joan L. Savage, an undivided 1/8; and Grace A. Savage, an undivided 1/8. All of the parties, except the two Savages, divided the forfeited interests of the two original locators, Morgan McCann and Mark Love (Exhibit D—Abstract entry 62).[21]

By a quitclaim deed dated July 14, 1958, recorded July 17, 1958, Frankie C. McCarthy conveyed all his interest in the four claims to William H. Farnum, Jr. and John R. Farnum for a consideration of $950.00 (Exhibit D—Abstract entry 66; Exhibit E—page 1).

By a warranty deed dated October 17, 1958, recorded October 30, 1958, B. T. Napier, Jr. and Clair Napier Catlin conveyed to themselves their own 3/16 record title interest in the four claims (Exhibit D—Abstract entry 67).

Assessment work instruments with respect to the four claims were recorded on the following dates: October 24, 1919; December 14, 1920; July 3, 1922; July 10, 1923; July 2, 1924; July 9, 1925; July 9, 1926; July 19, 1927; June 7, 1928; July 13, 1929; June 25, 1930; July 25, 1949; June 30, 1955 (Exhibit D—Abstract entries 31, 32, 34, 35, 36, 38, 42 through 47, and 55).

VI. The Oyler Nos. 1 through 4.[22]

The Oyler Nos. 1 through 4 oil shale placer mining claims were allegedly located in September of 1916

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[21] Again the records of the Bureau of Land Management would have shown that the two remaining original locators had died sometime prior to 1930 and that their interests passed to various heirs throughout the country.

[22] All of the four claims in the Oyler group are involved in Civil Action 9202.

by Ida O. Herwick, J. L. Herwick, Guy Herwick, Oren Herwick, William Herwick, Jennie Herwick, Fred Herwick and James Doyle.

Between 1916 and 1919 three separate sets of location certificates were filed with respect to the four claims. The first or original set, recorded October 3, 1916, included a range-township description of the claims, but because the lands covered by the claims had not then been publicly surveyed, the location certificates also described the claims by metes and bounds. The claims were described as covering what would be the NE¼ of Section 10, the N½ and the N½SW¼ of Section 11, and the W½NW¼ of Section 12, Township 6 South, Range 95 West, when the lands were surveyed. (Exhibit B—Abstract entries 6 through 9.)

In the second set of location certificates, dated October 3, 1916, and recorded January 12, 1918, the claims were described only by metes and bounds (with the exception of the Oyler No. 1),[33] in terms identical to the metes-and-bounds description found in the first set of location certificates (Exhibit B—Abstract entries 13 through 16).

The third set of location certificates, each captioned "Amended Location Certificate" dated January 31, 1918 and recorded February 2, 1918, included a range-township description of the claims identical to the description in the first set of location certificates; the amended certificates also included a metes-and-bounds description of the claims, identical to the corresponding description in the original location certificates with respect to claim Nos. 1, 3 and 4, and

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[33] The location certificate describing the Oyler No. 1 also recited that "when the public survey shall have been made the same will be the NE¼ of Section 10, Township 6 South, Range 95 West, 6 P.M."

slightly different with respect to claim No. 2 (Exhibit B—Abstract entries 17 through 20).

A second "Amended Location Certificate" dated November 15, 1918, was filed with respect to Oyler No. 4 on November 16, 1918. By changing the metes-and-bounds description, this certificate was intended to significantly alter the position of claim No. 4 (Exhibit B—Abstract entry 22).

As originally located, each of the claims covered 1/4 of a section of land or 160 acres each. The claim allegedly covered the NE¼ of Section 10, the N½ and the N½SW¼ of Section 11, and the W½NW¼ of Section 12, in Township 6 South, Range 95 West. The locators claimed the discovery of a valuable mineral within the limits of each of the four mining claims, and in effect asserted that the lands (640 acres) were valuable for mining purposes.

By a mining deed dated November 9, 1917, and recorded December 3, 1917, before the date of filing of the second set of location certificates, seven of the original locators of the Oyler claims conveyed their interests to the eighth locator, J. L. Herwick (Exhibit B—Abstract entry 11).

By an instrument dated and recorded November 16, 1918, J. L. Herwick, the remaining original locator, agreed to quitclaim the Oyler Nos. 1 through 4 claims to M. W. Bausell, N. E. Beck, J. G. Paden, Ed A. O'Brien, E. T. Underwood and J. A. Wilson, under an escrow arrangement, for $4,000.00 and 5,000 shares of stock in the National Oil Shale Refining Company (Exhibit B—Abstract entry 21). This agreement was supplemented by a quitclaim deed dated November 15, 1918, recorded September 4, 1919, by which J. L. Herwick conveyed the Oyler Nos. 1 through 4 claims to the persons named in the agreement for a recited consideration of $4,500.00 (Exhibit B—Abstract entry 24).

By a quitclaim deed dated December 1, 1919, recorded November 9, 1920, M. W. Bausell, Monnie G. Bausell, N. E. Beck, Mrs. N. E. Beck, J. G. Paden, Josie Paden, Ed A. O'Brien, Mrs. Ed A. O'Brien, E. T. Underwood, Mrs. Ina Underwood, J. A. Wilson and Mrs. J. A. Wilson (Being the persons to whom J. L. Herwick had earlier quitclaimed the Oyler claims, and presumably the wife of each) conveyed the Oyler Nos. 1 through 4 claims to the Champion Oil Shale and Refining Company [34] (Exhibit B—Abstract entry 28). The deed of conveyance was acknowledged in New Mexico and Kansas.

By a mining deed dated November 27, 1920, recorded March 24, 1921, The Champion Oil Shale and Refining Company conveyed the Oyler Nos. 1 through 4 claims to the Index Shale Oil Company [35] (Exhibit B—Abstract entry 29).

Beginning in 1923, lands owned by the Index Shale Oil Company, including the Oyler Nos. 1 through 4 placer mining claims, became subject to a number of labor liens, mortgages, judgments, and decrees as a result of the financial indebtednesses of Index Shale Oil Company (Exhibit B—Abstract entries 30 through 43, 45). On July 30, 1928, in response to a complaint filed by Harry L. Brown, the District Court, Garfield County, Colorado, issued an order appointing a receiver for Index Shale Oil Company

[34] The incorporators of Champion Oil Shale and Refining Company, a New Mexico corporation, were N. W. Bausell, J. A. Wilson, J. G. Paden, Edw. A. O'Brien, N. E. Beck, E. T. Underwood, and D. R. Carrol. Each incorporator also owned an equal number of shares (Exhibit B—Abstract entry 61).

[35] The incorporators of Index Shale Oil Company, a Colorado corporation, were Chester W. Church, Courtland R. Jones, William R. Mack, and Edward B. Wheeler (Exhibit B—Abstract entry 60).

(Exhibit B—Abstract entry 47). This receiver was subsequently dismissed in a court action of November 19, 1934, and Harry L. Brown was left in charge of certain property involved in the receivership (Exhibit B—Abstract entry 62). Upon the later motion of Harry L. Brown, the cause of action against Index Shale Oil Company was dismissed (Exhibit B—Abstract entry 63).

By a quitclaim deed dated November 15, 1948, recorded February 11, 1949, Chester W. Church, J. W. Lawrence, J. L. Bickel, Wm. T. Mack and C. J. Pfusch, allegedly "the sole surviving directors of the Index Shale Oil Company, dissolved," conveyed the Oyler Nos. 1 through 4 claims to Harry L. Brown and Penelope Chase Brown [36] (Exhibit B—Abstract entry 56).

By a quitclaim deed dated December 9, 1948, recorded February 11, 1949, Harry L. Brown and Penelope Chase Brown conveyed the Oyler Nos. 1 through 4 claims to the Inland Shale Oil Company [37] (Exhibit B—Abstract entry 57).

By a quitclaim deed dated February 3, 1953, recorded February 11, 1953, the Inland Shale Oil Company conveyed the Oyler Nos. 1 through 4 claims to Harry L. Brown and Penelope Chase Brown (Exhibit B—Abstract entry 65).

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[36] There is no indication of when the Index Shale Oil Co. dissolved; however, the Articles of Incorporation dated October 20, 1920 stated that the corporation would have a term of existence of 20 years (Exhibit B—Abstract entry 60).

[37] The certificate of incorporation of the Inland Shale Oil Company, dated November 3, 1948 and recorded May 4, 1950, indicates that the three original incorporators were Courtland R. Jones, Harry L. Brown, and Penelope Chase Brown (Exhibit B—Abstract entry 59).

On August 6, 1952, Harry L. Brown, Penelope Chase Brown, and Delas D. Potter, later joined by Harriette M. Jones and Chester W. Church, entered into an agreement with Pacific Oil Company, recorded January 4, 1954, by which the Browns and Potter as their agent agreed to sell and Pacific Oil Company agreed to buy certain oil shale claims, including the Oyler Nos. 1 through 4 claims, if the Browns were successful in perfecting title and securing patent to the lands. The agreement provided that Pacific Oil Company would pay $50.00 per acre for such lands (Exhibit B—Abstract entry 68).

Harry L. Brown and Penelope Chase Brown instituted a quiet title action in the District Court, Garfield County, Colorado, on March 7, 1953, with respect to certain named lands, including the Oyler Nos. 1 through 4 placer mining claims (Exhibit B—Abstract entires 66, 67). On July 21, 1954, the Distract Court determined that Harry L. Brown and Penelope Chase Brown were the sole and exclusive owners of the mining claims involved in the action, including the Oyler Nos. 1 through 4 claims, as against all defendants named in the complaint (Exhibit B—Abstract entry 69).

By an agreement dated April 25, 1955 between the Browns, Pacific Oil Company and others, arrangements were made to convey the Oyler claims and other claims to Pacific Oil Company (Exhibit B—Supplemental Abstract pages 1 through 19). This agreement provided in part as follows:

> "7. Subject to the other provisions of this paragraph, in the event patent shall be denied to any of said placers, or portions thereof, Party of the Second Part shall reconvey, by Special Warranty Deed, to the Parties of the First Part Harry L. Brown and Penelope Chase Brown the placers,

or portions thereof, as to which patent shall have been denied, and thereupon be relieved from further obligation with reference to such placers, or portions thereof, as to which patent has been denied."

* * * *

"If, however, Party of the Second Part is of the opinion and so notifies the Parties of the First Part within Ninety (90) days after receipt of notice of such patent denial that patent was denied because of some defect which is capable of being cured and desires to attempt to cure such defect and to continue its efforts to secure such patent, then Party of the Second Part shall have the right to retain the title to such land as to which patent has been denied and shall, with reasonable diligence, take and prosecute such steps as to it seem proper to cure such defect and attempt to secure such patent."

By a quitclaim deed dated May 13, 1955, recorded May 19, 1955, Gertrude I. Potter transferred any interest which she could convey in the Oyler Nos. 1 through 4 claims to the Pacific Oil Company (Exhibit B—Abstract entry 71).[35]

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[35] Delos D. Potter died on November 30, 1954, and under the terms of his will his wife Gertrude I. Potter became executrix of his estate (Exhibit B—Supplemental Abstract—pages 21, 22). On March 8, 1952, Delos Potter had entered into an agreement with Harry L. Brown, Penelope Chase Brown, Harriette M. Jones, and Chester W. Church forming the Harry L. Brown syndicate to provide for the management of certain unpatented oil shale mining claims (Exhibit B—Supplemental Abstract—page 1). This agreement has been followed by an agreement between Harry L. Brown, Penelope Chase Brown, and Delos Potter, and Pacific Oil Company relating to the sale of certain oil shale mining claims to Pacific Oil Company if patents were granted for the claims (Exhibit B—Abstract

By a deed dated May 16, 1955, recorded May 19, 1955, Harry L. Brown and Penelope Chase Brown conveyed the Oyler Nos. 1 through 4 placer mining claims to the Pacific Oil Company, subject to the rights of the United States of America therein (Exhibit B—Abstract entry 72).

On September 23, 1955, Pacific Oil Company filed for record an amended location certificate pertaining to the Oyler No. 4 claim (Exhibit B—Abstract entry 73). This amended location certificate was intended to re-establish the position of Oyler No. 4 as it had been described in the two original location certificates and the first amended location certificate filed in reference to the claim (Exhibit B—Abstract entries 7, 16, 20). The alleged position of the claim had been changed by the metes-and-bounds description in the second amended location certificate filed on November 16, 1918 (Exhibit B—Abstract entry 22).

By a quitclaim deed dated September 26, 1956, recorded December 3, 1956, Mrs. H. A. Hansen, Mrs. Marie Woolmans, Warren Hansen, Dan Hansen, Harold Hansen, Rex Rankin, Ruth Rankin Kilbey, Beth Rankin Derryberry, Herman Vorbeck, and Robert L. Vorbeck conveyed any interests they might have in the Oyler Nos. 1 through 4 claims, as well as their interests in certain other named claims, to Pacific

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entry 68). These two agreements were superseded by a later agreement of April 25, 1955 between Harry L. Brown, Penelope Chase Brown, Gertrude I. Potter as Executrix of the Estate of Delos D. Potter, Harriette M. Jones, and Chester W. Church and Pacific Oil Company (Exhibit B—Supplemental Abstract—pages 1 through 19). It was in compliance with the terms of this agreement that Gertrude I. Potter, Harry L. Brown, and Penelope Chase Brown conveyed their interests in the Oyler Nos. 1 through 4 claims to Pacific Oil Company in May of 1955.

Oil Company (Exhibit B—Supplemental Abstract—pages 26 through 33).[39]

On June 24, 1958, Pacific Oil Company filed for record a set of amended placer location certificates pertaining to the Oyler Nos. 1 through 4 claims, dated June 17, 1958 (Exhibit B—Supplemental Abstract—pages 34 through 41). These amended certificates described the Oyler claims as being contiguous to the patented Sheridan placer claims, which are situated south of the Oylers.

On July 16, 1959, Pacific Oil Company filed for record another set of amended location certificates, dated June 22, 1959, certaining to the Oyler Nos. 1 through 4 claims (Exhibit B—Supplemental Abstract —pages 42 through 56). These amended certificates described the Oyler claims by means of the Official Plat of Mineral Survey No. 20819.[40]

By a Special Warranty Deed dated July 16, 1964, recorded August 10, 1964, Pacific Oil Company conveyed the Oyler Nos. 1 through 4 claims to Penelope Chase Brown (Exhibit B—Supplemental Abstract—pages 57 through 60).[41]

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[39] All of the grantors of this quitclaim deed were named as defendants in the July 21, 1954 degree of the District Court of Garfield County, Colorado, quieting title to Oyler Nos. 1 through 4 placer mining claims and other lands (Exhibit B—Abstract entry 69).

[40] These amended location certificates shifted the boundaries of the claims hundreds of feet to the south and to the east and added approximately 20 acres to the claims.

[41] This reconveyance was pursuant to the terms of the April 25, 1955 agreement between Pacific Oil Company and Harry L. Brown, Penelope Chase Brown, Gertrude I. Potter as Executrix of the Estate of Delos D. Potter, Harriette M. Jones, and Chester W. Church, (Exhibit B—Supplemental Abstract —pages 1 through 19).

[Footnote continued on page 102]

On December 18, 1964, a "Memorandum of Agreement" dated November 9, 1964 was filed for record, stating that on September 1, 1964, Penelope Chase Brown and The Oil Shale Corporation entered into a lease and option-to-purchase arrangement covering the Oyler Nos. 1 through 4 oil shale placer mining claims (Exhibit B—Supplemental Abstract—pages 61 through 63).[42]

Assessment work instruments were filed for the benefit of the Oyler Nos. 1 through 4 placer mining claims by various persons on the following dates: January 5, 1918; December 14, 1918; December 27, 1919, December 29, 1919; August 10, 1925; April 29, 1926; June 28, 1933; June 28, 1935; June 28, 1936; June 26, 1937; June 18, 1939; June 30, 1939; June 27, 1949 (Exhibit B—Abstract entries 12, 23, 25, 26, 44, 46, 50 through 55, and 58).

VII. Summary.

The 48 Bute claims covering 7,680 acres were allegedly located during the winter of 1919-1920 by a group of nine individuals who conveniently dropped and added names to keep the number of locators to eight on any one location certificate. A notice in lieu of annual assessment work seeking the benefits of a suspension of the requirements of assessment work

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[41] [Continued]

According to information found in the reconveyance deed, Harry L. Brown was deceased at the time of this reconveyance. By a decree of the County Court, Mesa County, Colorado, entered on December 4, 1959, Penelope Chase Brown was named the sole heir at law of Harry L. Brown.

[42] In other words, the Oil Shale Corporation purchased an interest in the litigation arising as a result of the rejection by the Land Office Manager on February 16, 1962 of the patent application filed by Pacific Oil Company.

by Congress was recorded in 1921. No instruments were filed for record concerning the Bute claims between 1921 and 1954. In fact, no one bothered to record notices in lieu of annual assessment work during periods of subsequent suspension by Congress, or to record estate proceedings involving the interests of deceased locators. In 1954 Tell Ertl searched out two parties who had allegedly located the claim some 34 years previously and acquired the record title to a 2/8 interest in the claims for $200.00. In 1955 Tell Ertl purportedly "for the purpose of compliance with the law with reference to unpatented mining claims" performed $100.00 worth of assessment work on each of the 48 Bute claims. Tell Ertl then proceeded to forfeit out the alleged co-owners of the claims through a notice published in the Grand Valley News and directed to each of the original group of nine locators, with the exception of the two who had quitclaimed their interests to Tell Ertl. At the time of this notice the original locators were either deceased or resided in various parts of the United States. On the basis of the acquisition of a 2/8 record title interest in the claims and the forfeiture proceedings Tell Ertl obtained the record title interest to the 48 Bute claims. In 1964 The Oil Shale Corporation acquired the record title to 16 of the Bute claims for a purchase price in installments of $1,536,000.00. The Oil Shale Corporation also entered into a lease and option arrangement with Tell Ertl covering the remaining 32 Bute claims and 62 other oil shale claims acquired by Tell Ertl through forfeiture proceedings for an annual rental of $148,000.00. The only instruments shown in the abstract of title from the time of the location of the claims some 45 years ago relating to annual assessment work are (1) the notice in lieu of labor recorded in 1921, and (2) the affidavit of an-

nual labor recorded in 1955 by Tell Ertl as the basis for the forfeiture proceedings. The 48 Bute claims that had lain stagnant from 1921 until 1954 when Tell Ertl searched out two original locators and acquired interests in the Bute claims for approximately 39 cents an acre appear to have had a value as unpatented mining claims of some $600.00 per acre in 1964.

The 18 Atlas claims covering 2,880 acres were allegedly located during the winter of 1919-1920 by a group of nine individuals who dropped and added names to keep the number of locators to eight on any one location certificate. Four of the original locators were also original locators of the Bute claims. The history of these claims is practically identical with the activity that took place with respect to the Bute claims. A notice in lieu of annual assessment work was recorded in 1921 with no other instruments being filed for record until 1954 when Tell Ertl obtained quitclaim deeds from two parties who had allegedly located the claims some 34 years previously. In 1955 and on the basis of his 2/8 record title interest Tell Ertl purportedly performed the annual assessment work for one year and then forfeited out the alleged co-owners of the claims through a notice in the Grand Valley News directed to seven of the original group of nine locators. In 1963 The Oil Shale Corporation entered into a lease and option arrangement with Tell Ertl covering the 18 Atlas claims, the 48 Bute claims and 44 other oil shale claims acquired by Tell Ertl through forfeiture proceedings. Again, the only instruments shown in the abstract of title from the time of the location of the claims some 45 years ago relating to annual assessment work are (1) a notice in lieu of labor recorded in 1921, and (2) the affidavit of annual labor re-

corded in 1955 by Tell Ertl as the basis for the forfeiture proceedings.

The 20 Camp Bird claims covering 3,200 acres were allegedly located during the winter of 1919-1920 by a group of eight individuals. Two of the original locators were also original locators of the Atlas claims and three of the original locators were also original locators of the Bute claims. The history of these claims is substantially the same as the activity that occurred with respect to the Bute claims and the Atlas claims with the exceptions (1) that the mining claimants did not bother to file a notice in lieu of annual assessment work in 1921, (2) that Tell Ertl searched out the alleged heirs of three original locators rather than the original locators themselves, and (3) that H. A. Dutton, Jr., who was apparently following a similar practice of reviving stagnant oil shale claims and who had also searched out the heirs of some of the original locators, answered Ertl's forfeiture notice and allegedly contributed his proportionate share of the annual assessment work for the one year. No instruments were filed for record concerning the Camp Bird claims between January of 1920 when the claims were located and November of 1955 when a quitclaim deed was obtained from an alleged heir of an original locator. No one bothered to record any estate proceedings involving the interests of the deceased locators, or to institute any actions to determine the interests of original locators until the late 1950s. In 1963 after Ertl had acquired Dutton's interest The Oil Shale Corporation entered into a lease and option arrangement with Tell Ertl covering the 20 Camp Bird claims and other oil shale claims acquired by Tell Ertl through forfeiture proceedings. The only instrument shown in the abstract of title from the time of the location of the Camp

Bird claims some 45 years ago relating to annual assessment work is the affidavit of annual labor recorded in 1956 by Tell Ertl as the basis for his forfeiture proceedings.

The eight Carbon claims and twelve Elizabeth claims were allegedly located during the spring of 1918 by members of the Juhan family, the Parnum family, the Ford family and others. Shortly after the claims were located they were conveyed to one of the original group of eight locaters. Undivided fractional interests were subsequently created in the claims, and as of 1923 the claims were held by H. C. Wolf, L. Z. Harrison, and Dr. J. P. Umpleby of Oklahoma City, Oklahoma, and Leon Levy, Sam Levy, and Amor F. Keene of New York City. These parties subsequently obtained a patent to two of the Carbon claims with the patented lands eventually being sold for taxes by Garfield County. With the exception of affidavits of annual assessment work that were recorded in 1923, 1924, 1925 and 1926, nothing appears of record concerning the unpatented Carbon and Elizabeth claims until 1957 when Wasatch Development Company apparently searched out Mrs. H. C. Wolf, allegedly the surviving spouse and only heir of H. C. Wolf, and obtained quitclaim deeds covering Wolf's 19/100 record title interest in the unpatented Carbon and Elizabeth claims. Almost immediately after obtaining this conveyance, Wasatch Development Company commenced the publication of a forfeiture notice in the Grand Valley News alleging that "said expenditure for labor and improvements was made in order to hold said claims under the provisions of U.S.C. Title 30, Section 28." In 1958 Wasatch Development Company obtained a determination of interests in the property of H. C. Wolf, who had died intestate in 1951 in Alabama. As a result

of the forfeiture proceedings, Wasatch Development Company forfeited out all parties except Joseph Umpleby, who contributed his proportion of the alleged assessment work. The only assessment work instrument that was filed with respect to the claims subsequent to July of 1926 was the one filed in 1957 as the basis for the forfeiture proceedings conducted by Wasatch Development Company.

The Northwest, Northeast and Southeast claims were allegedly located during the summor of 1918. Three transfers of the interests of original locators occurred between the time of the location of the claims and 1925. For the 27-year period between 1925 and 1952 no conveyances affecting the claims were made. In 1955 a forfeiture notice was published in the Grand Valley News stating that during the year ending June 30, 1955, the annual assessment work had been performed and that co-owners of the claims who failed to contribute their proportion of the expenditures would be forfeited out. As a result the record title interest of two original locators who had died sometime prior to 1930 were forfeited out. Assessment work instruments with respect to these claims were recorded in the following years: 1919, 1920, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1949 and 1955.

The four Oyler claims were allegedly located during the fall of 1916 by members of the Herwick family and James Doyle. Several conveyances of the claims were made and in 1920 the Index Shale Oil Company obtained the full record title interest in the claims. The Index Shale Oil Company went into receivership in 1928. No conveyances affecting the claims were made between 1920 and 1948. In 1948 the sole surviving directors of the Index Shale Oil Company, a dissolved corporation, conveyed the claims

to Harry L. and Penelope Chase Brown. Arrangements were subsequently made between the Browns and the Pacific Oil Company with respect to the patenting and subsequent purchase of the claims and others by the Pacific Oil Company. In 1955 the claims were conveyed by the Browns to the Pacific Oil Company. Apparently as a result of the Land Office Manager's decision of 1962 rejecting the patent application, the Pacific Oil Company reconveyed the claims to Penelope Chase Brown. In 1964, several months after the Department had issued its decision in the *Union Oil Company* case, The Oil Shale Corporation entered into a lease and option to purchase arrangement with Penelope Chase Brown. Assessment work instruments with respect to these claims were recorded in the following years: 1918, 1919, 1925, 1926, 1933, 1935, 1936, 1937, 1938, 1939 and 1949.

APPENDIX C

The Assessment Work Contest Proceedings

I. Contest 11757—Bute Nos. 1 through 48 claims.[1]

Contest 11757 (Exhibit I-1) was originally initiated in 1927. On May 4, 1928, the Commissioner, General Land Office, issued a letter-decision declaring the Bute Nos. 1 through 48 claims null and void for the reason that the named contestees had failed to answer charges alleging a failure to peform annual assessment work "for the years ending July 1, of 1921 to 1927, inclusive." The Commissioner found that notice of the charges had been served on five of the eight mining claimants and that the registered letters addressed to the other three mining claimants had been returned unclaimed. None of the mining claimants made any appearance in the proceedings in order to protect their interests in the claims.

New proceedings were initiated, after the promulgation of the Krushnic decision by the Supreme Court, by letters dated June 30, and July 22, 1930, from the Commissioner to the Register of the Denver Land Office.[2] Complaints dated August 2, August 7 and October 24, 1930, and one dated July 13, 1931, were addressed to those persons whom it was thought had interests in the Bute claims at the time. The August 7 complaint stated in part as follows:

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[1] The claims involved in Civil Action 8680 are Nos. 1 through 19, 21 through 28, and 30 through 48.

[2] As a part of the proceedings a "Notice of Forfeiture" was posted on each of the claims advising that as a result of the failure to perform assessment work the United States had entered and taken possession of the lands for its own use and purposes.

> "That annual assessment work to the value of $100.00 was not performed upon each or any one of the Bute Nos. 1 to 48, inclusive, oil shale placers for the year ending July 1, 1930, and that work has not been since resumed.
>
> "Answer, if filed, should be filed in duplicate and contain a request for hearing if you wish a hearing set in the case.
>
> "By reason of the default in said assessment work the United States has taken possession of the lands within the claims for its own uses and purposes."

The August 2 and 7 complaints were addressed to the following: Benton Canon, Ethel McGahen, Frank Jackson, Stephen Murphy, W. S. Furman, James Murphy, Charles Anderson, and J. C. Moore, or his heirs or devisees. The August 2 complaint stated in the heading that it involved the Bute Nos. 1 through 48 claims and described the 48 claims in a footnote. The charge of a continuing failure to do assessment work was limited, however, to the Bute Nos. 1 through 18 claims. The August 7 complaint was drafted to correct this error, its charge alleging a continuing failure to perform annual assessment work for the benefit of the Bute Nos. 1 through 48 oil shale claims.

In a letter dated October 21, 1930, addressed to the Acting Register of the Denver Land Office, the District Law Officer of the General Land Office stated that Benton Canon died December 29, 1927, leaving a will which was probated February 24, 1928, and that his heirs had been identified as his widow, Mrs. Evelyn Canon, and his two daughters, Eva and Helen Canon. The October 24, 1930, complaint was addressed to these heirs, the charge in the complaint

being identical with the one made in the August 7 complaint.

In a letter dated October 28, 1930, addressed to the Acting Register of the Denver Land Office, the District Law Officer stated that Eva T. Canon, one of the heirs of Benton Canon, was then receiving mail c/o the Free Public Library, Council Bluffs, Iowa, at which place a service of notice of contest should be attempted. There is, however, no evidence in the record that any attempt was made to serve Miss Canon at that address.

On January 15, 1931, the Register addressed a letter to the Commissioner stating that service of notice of contest had been made on each of the claimants and recommending that the Bute claims be declared null and void for the reason that the claimants had failed to deny the charges in the contest complaint.

By a letter-decision dated July 3, 1931, the Commissioner declared the Bute Nos. 1 through 48 claims null and void to the extent of the interests of the parties served. This letter-decision read in part as follows:

> "The failures of the parties served with notices to file answers denying the charge are taken as admissions by them of the truth thereof in view of which the Bute Nos. 1 to 48 inclusive, oil shale placers are declared null and void to the extent of their interests therein, and the United States has taken possession of the lands within the claims for its own uses and purposes."

In the same letter-decision the Commissioner told the Register that reports from the field had stated that J. C. Moore's heirs were his widow, Mrs. Harry Kelly and his minor daughter, Colleen Moore, and that Ethel McGahen's married name was Lawrence.

Following the Commissioner's instructions, the complaint dated July 13, 1931, was drafted and sent to the persons considered to be the remaining unserved claimants. By a letter dated September 30, 1931, the Register advised the Commissioner that the named contestees had been served and that they had not responded to the charges in the complaint. On the basis of his letter and the return receipts attached to it, the Commissioner issued a letter-decision dated November 3, 1931. This letter-decision reads in part as follows:

> "The failure of the contestees to file answers denying the charges are taken as admissions by them of the truth thereof, in view of which the Bute Nos. 1 to 48 inclusive, oil shale placers are declared null and void in their entirety and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed.
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> "Advise the parties hereof by ordinary mail."[3]

Following is a list of the names of the persons who held record title to the Bute Nos. 1 through 48 claims at the time of Contest 11757[4] according to the ab-

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[3] In other words, Interior proceeded by separate decisions relating to separate interests in the claims. The first decision of July 3, 1931, declared the claims null and void as to the interests of the parties served and who defaulted. The second decision of November 3, 1931, declared the claims null and void as to the interests of the remaining parties who were felt at the time to have been properly served subsequent to the decision of July 3, 1931, and who defaulted.

[4] Charles (Charley) Anderson had an interest in the Bute Nos. 1-8, 10-17, 19-26, 28-35, 37-44 and 46-48 claims. Ethel McGahen (Lawrence) had an interest in the Bute Nos. 1-7, 9-16, 18-25, 27-34, 36-43 and 45-48 claims. W. S. Furman

stract of title submitted by the plaintiffs, as supplemented by information in the file for Contest 11757. Also shown are the addresses to which the complaints were mailed, the names of the persons who signed the post office return receipts for these registered letters, and the dates of receipt of such letters.

Claimant	Return receipt signed by—	Notice received
Mrs. Evelyn Canon, 406 Oak Avenue, Ithaca, New York	Mrs. Evelyn Canon	October 30, 1930
Helen Canon, 406 Oak Avenue, Ithaca, New York	Mrs. Benton Canon	October 30, 1930
Eva T. Canon, 406 Oak Avenue, Ithaca, New York	Mrs. Benton Canon	October 30, 1930
Charles (Charley) Anderson, Shiprock, New Mexico	Charles Anderson	On or before August 26, 1930
Ethel McGahen Lawrence, 1114 W. 4th St., San Pedro, California	Ethel McGahen Lawrence	July 18, 1931
Mrs. Harry Kelly, R.R. No. 4, Grand Junction, Colorado	Mrs. Harry Kelly	July 17, 1931
Colleen Moore, R.R. No. 4, Grand Junction, Colorado	Mrs. Harry Kelly	July 17, 1931
W. S. Furman, Burbank, California	G. H. Furman	August 13, 1930
James Murphy, Burbank, California	Mrs. James Murphy	August 14, 1930
Frank Jackson, c/o Stephen A. Post, 329 Ute Avenue, Grand Junction, Colorado	E. Elizondo	On or before August 26, 1930
Stephen A. Murphy, Burbank, California	Mrs. Murphy	August 14, 1930
Stephen A. Post, 329 Ute Ave., Grand Junction, Colorado	Not named as a contestee	

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had an interest in the Bute Nos. 1-5, 7-14, 16-23, 25-32, 34-41 and 43-48 claims. James Murphy had an interest in the Bute Nos. 1-4, 6-13, 15-22, 24-31, 33-40 and 42-48 claims. Frank Jackson had an interest in the Bute Nos. 1-3, 5-12, 14-21, 23-30, 32-39 and 41-48 claims. Stephen A. Murphy had an interest in the Bute Nos. 1, 2, 4-11, 13-20, 22-29, 31-38 and 40-47 claims. Stephen A. Post had an interest in the Bute Nos. 2-10, 12-19, 21-28, 30-37, 39-46 and 48 claims. The heirs of Benton Canon shared an interest in the Bute Nos. 1, 3-9, 11-18, 20-27, 29-36, 38-45, 47 and 48 claims. The heirs of J. C. Moore shared an interest in the Bute Nos. 1-6, 8-15, 17-24, 26-33, 35-42 and 44-48 claims.

Since Stephen A. Post was not named as a contestee he was not, of course, served with notice of Contest 11757. Of the remaining claimants the evidence of service of notice of contest does not meet the standards set forth in the Department of Interior decision *Union Oil Company of California, et al.*, 72 I.D. 313 (1965), which supplements the decision *Union Oil Company of California, et al.*, 71 I.D. 169 (1964), as to the following: W. S. Furman, James Murphy, Frank Jackson, Stephen A. Murphy, Eva Canon and Helen Canon. Accordingly, the Commissioner's decisions were effective as to Mrs. Evelyn Canon, Charles Anderson, Ethel McGahen Lawrence, Mrs. Harry Kelly, and Colleen Moore.[5]

There are no documents in the contest file to show that the mining claimants took any action whatsoever during the course of Contest 11757. Nor is there anything to show that the claimants' acquiescence in the declaration of invalidity of their claims was subsequently disavowed by any action on their part. They apparently did nothing to advise the Depart-

[5] The standards followed by the Interior Department in the supplemental Union Oil Company decision with respect to clearing the cloud of old mining claims plastered over the public domain should be compared with the standards adopted by Tell Ertl as a volunteer in performing assessment work and forfeiting out parties holding record title interests in old mining claims. Interior in the supplemental decision (and contrary to the conclusions reached as to service at the time of the old proceedings in the 1930s) concluded, for example, that service on a spouse and the posting of a Notice of Forfeiture on the lands was not effective to clear the public domain of stagnant mining claims. Tell Ertl, however, adopted a standard of publishing a Notice of Forfeiture in the Grand Valley News, a small weekly newspaper in the town of Grand Valley Colorado, naming the original locators, many of whom were deceased or lived in other parts of the country in order to clear the record title to stagnant mining claims.

ment of the Interior that they asserted any interest in the claims either prior to, during, or subsequent to the contest proceedings. They did not exercise their right to file, pursuant to Rule 85 of the Department's rules of practice then in effect, a motion for the exercise of the Secretary's supervisory power, either before or after the promulgation of the Supreme Court's *Ickes* decision or the Department's Shale Oil Company decision. Indeed the last entry on the Backing Sheet for Contest 11757 is dated November 3, 1931, and reads as follows: "R. locations null and void. Case Closed—O—B . . . posted November 10, 1931. . . ." Nor is there anything in the contest file to show, or from which it may be inferred that this contest was reopened or the decisions therein modified in any respect upon a motion initiating within the Department itself.

The contest docket page for Contest 11757 (Exhibit K) shows that the case was closed in 1931 and that no further action was taken with respect to the case until 1959 when the case file was received in the local land office of the Bureau of Land Management.

The appropriate tract book pages in the local land office in Denver, Colorado, do not contain any reference to the contest proceedings or the decisions declaring the claims null and void (Exhibit GG-2—Tract book pages 181, 183 through 186). The tract book pages in the Washington office of the Bureau of Land Management (Exhibit GG-2—Tract book pages 133, 135 through 138) refer to an entry under section 18 of Township 4 South, which reads as follows:

"Bute No's. 1 to 48 oil shale placer locations . . . null and void, case closed 'N' July 3, 1931

. . . closed as to remaining parties 'N' November 3, 1931"

There is nothing on the Washington tract books to indicate that the above entry was changed or revoked.

II. Contest 11759—Atlas Nos. 1 through 18 claims.[6]

Contest 11759 (Exhibit I-2) was originally initiated in 1927. On May 4, 1928, the Commissioner issued a letter-decision declaring the Atlas Nos. 1 through 18 claims null and void for the reason that the named contestees failed to answer charges alleging that annual assessment work "for the years ending July 1 of 1921 to 1927, inclusive, was not performed upon or for the benefit of the claims." The Commissioner found that notice of the charges had been served on three of the eight mining claimants and that the registered letters addressed to the other five mining claimants had been returned unclaimed. None of the mining claimants made any appearance in the proceedings in order to protect their interests in the claims.

New proceedings were, however, ordered after the promulgation of the *Krushnic* decision by the Supreme Court, and complaints dated July 13, 1931, and November 9, 1931 were addressed to the persons whom it was thought had an interest in the claims at that time.[7] The sole charge in the complaints dealt with the claimant's alleged continuing failure to perform annual assessment work. The complaints spelled out the results of failing to file an answer and advised the mining claimants that "by reason of the

[6] The claims involved in Civil Action 8680 are Nos. 1, 2, 3, 7, 9, 10, 12, 17 and 18.

[7] Again as a part of the proceedings a "Notice of Forfeiture" was posted on each of the claims by the United States.

default in said assessment work the United States has taken possession of the lands within the claims for its own uses and purposes." The complaints were sent by registered mail to the following: Ethel McGahen Lawrence, Albert C. Coleman, Mrs. L. I. (Iris Campbell) Robinson, Harry U. Longwell, Stephen A. Post, W. S. Furman, Marcedus Murphy Furman and Mrs. Stephen A. Post.

In a letter dated August 27, 1931, the Register of the Denver Land Office advised the Commissioner that evidence of service of notice of Contest 11759 had been received for seven of the eight parties named as contestees and that no answer had been filed. By a letter-decision dated October 8, 1931, the Acting Commissioner of the General Land Office declared the Atlas Nos. 1 through 18 claims null and void to the extent of the interests of the parties served. This decision reads in part as follows:

> "The failures of the contestees served with notices to file answers denying the charge were taken as admissions by them of the truth thereof, in view of which the Atlas Nos. 1 to 18, inclusive, oil shale placers are declared null and void to the extent of the interests of the parties served and the United States has taken possession of the lands within the claims for its uses and purposes. *The case is closed to the extent of the interests of the parties served.* (Underlining added.)
>
> "Advise the parties by ordinary mail."

By a letter dated October 8, 1931, the Acting Commissioner sent to the Register in Denver a copy of his decision of that date, and told him to ascertain the address of and serve with a notice of contest Mrs. Stephen A. Post, the only claimant then con-

sidered unserved. Thereafter, two attempts were made to serve Mrs. Post, once in November, 1931, and once in February, 1932, both of which failed.

Following is a list of the names of the persons who held, according to the abstract of title submitted by the plaintiffs, as supplemented by information in the file for Contest 11757, the record title to the Atlas claims during the time of Contest 11759.[8] Also shown are the addresses to which the contest complaints were sent by registered mail, the names of the persons who signed the post office return receipts for these registered letters, and the dates of receipt of such letters.

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[8] W. S. Furman had an interest in the Nos. 1, 3-10 and 12-18 claims. Marcedus Murphy had an interest in the Nos. 1, 2, 4-11 and 13-18 claims. Iris Campbell (Robinson) had an interest in the Nos. 1-3, 5-12 and 14-18 claims. Ethel McGahen (Lawrence) had an interest in the Nos. 1-4, 6-13, and 15-18 claims. W. H. Post had an interest in the Nos. 1-5, 7-14, and 16-18 claims as an heir of Emma J. Boyd. Stephen A. Post had an interest in the Nos. 1-18 claims either as a locator or as an heir of Emma J. Boyd. Albert C. Coleman had an interest in the Nos. 1-6, 8-15, 17 and 18 claims. Harry U. Longwell had an interest in the Nos. 1-7, 9-16, and 18 claims. The heirs of J. C. Moore, i.e., Mrs. Harry Kelly and Colleen Moore, his widow and daughter respectively, shared an interest in the Nos. 2-9 and 11-18 claims.

Claimant	Return receipt signed by—	Notice received
W. S. Furman, 639 South Spring St., Los Angeles, California	N. Youloff	July 18, 1931
Ethel McGahen Lawrence, 1114 W. 24th St., San Pedro, California	Ethel McGahen Lawrence	July 18, 1931
Albert C. Coleman, Oxford Hotel, Grand Junction, Colorado	Mrs. A. J. Smith	July 17, 1931
Harry U. Longwell, 218 Sunset Boulevard, Modesto, California	Harry U. Longwell	July 20, 1931
Stephen A. Post, 229 North First St., Grand Junction, Colorado	Stephen A. Post	July 17, 1931
W. H. Post	Not named as a contestee	
Marcedus Murphy, 144 South Cedar St., Glendale, California	Catherine Murphy	July 18, 1931
Mrs. Harry Kelly	Not named as a contestee	
Colleen Moore	Not named as a contestee	
Iris Campbell Robinson, 2358 E. 70th St., Chicago, Illinois	Iris C. Robinson	July 17, 1931

Those who were not named as contestees were not served with notice of Contest 11759. This includes W. H. Post, Mrs. Harry Kelly and Colleen Moore. In addition, the evidence of service of notice of contest on Albert C. Coleman, Marcedus Murphy and W. S. Furman does not meet the standards set forth in the 1965 *Union Oil Decision, supra.* Accordingly, the decision declaring the Atlas Nos. 1 through 18 oil shale claims null and void was effective only as to Ethel McGahen Lawrence, Harry U. Longwell, Stephen A. Post and Iris Campbell Robinson.

No service having been made on Mrs. Stephen A. Post, who at the time was considered to have an interest in the Atlas claims, Contest 11759 had not been completely closed on the books of the Denver Land Office when the Supreme Court issued the *Ickes* decision. By a letter dated August 16, 1935, addressed to the Commissioner from the Register, captioned "Transmitting Contest Record 11759. Dismissed and closed," Contest 11759 was completely closed on the records of the Denver Land Office and

the case file was transmitted to the Commissioner's Office in Washington, D. C. The letter states in part:

> "Your letter . . . of July 29, 1935 . . . instructed this office to close all cases of adverse proceedings against mineral locations or entries where the charge was failure to perform annual assessment work on the claims. Contest 11759 is closed on the records of this office under those instructions and the papers herewith transmitted. Claimants have not been advised of this action as they have not filed answer to the charges."

Since the Commissioner's letter-decision of October 8, 1931, had closed Contest 11759 to the extent of the seven persons considered to have been served with notice of contest, it is evident that this letter could have the effect only of closing the contest to the extent of the one person who remained, on the records of the Land Office, as an unserved claimant. If the word "dismissed," used in the caption of the transmittal letter, has any meaning at all, it must mean only that the contest was dismissed as to the one claimant remaining unserved. The Register could not, of course, reverse the action of his superior, the Commissioner of the General Land Office, and dismiss the contest as to seven parties whose interests were declared null and void by the October 8, 1931, letter-decision.[9]

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[9] The July 29, 1935, letter from the Commissioner (Exhibit 72) reads in part as follows:

> "Several contest cases involving oil shale placers are now pending in your office. In view of the decisions referred to hereinabove, you are instructed to close out on your records and transmit to this office all contest cases involving solely the question of a failure to perform annual assessment work. . . ."

[Footnote continued on page 121]

There are no documents in the contest file to show, or from which it may be inferred, that the claimants took any action during the course of Contest 11759 to assert their alleged rights in the mining claims. Nor is there anything to show that they later disavowed their acquiescence in the declaration of invalidity of the claims. They did nothing to advise the Department that they had, or wished to reinstate, claims to the land. Neither did they exercise their right, provided by Rule 85 of the Department's Rules of Practice then in effect, to petition for an exercise of supervisory authority by the Secretary of the Interior.

The Backing Sheet for Contest 11759 contains four entries. The first noting that adverse proceedings had been initiated; the second, dated October 8, 1931, reads as follows: "R.—Locations Null and Void—Case Closed—O—D . . . Posted . . . October 10, 1931 . . . ." The third entry, dated September 19, 1935, simply reads "to DN-CRB." The last entry is dated March 13, 1943. It reads "Insts. to Reg. C 1606652 —D . . . ." Thus, there is nothing to show on this Backing Sheet, or elsewhere in the record, that the contest was reopened or that the decision issued therein was modified in any respect after the promulgation of the Supreme Court's *Ickes* decision or the Department's *Shale Oil Company* decision.

The contest docket page for Contest 11759 (Exhibit K) shows that the claims were declared null and void as to the parties served in 1931, that the parties were so advised, and that the case was closed pursuant to the instructions of July 29, 1935 (Ex-

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[9] [Continued]

The subject contest was pending only as to the interest of the one unserved claimant and had previously been closed as to the interests of all other parties.

hibit 72). The contest docket page further shows that no subsequent action was taken with respect to the case until 1959 when the case file was received in the local office of the Bureau of Land Management.

The appropriate tract book pages in the Denver Land Office do not contain any reference to the contest proceedings or the decisions declaring the claims null and void (Exhibit GG-1—Tract book pages 133, 136 and 137). The tract book pages in the Washington Office of the Bureau of Land Management (Exhibit GG-3—tract book page 197)[10] refer to an entry under Section 15 of Township 4 South which reads as follows: "Atlas Nos. 1 to 18 oil shale placers (in Sections 10, 11, 12, 13, 14, and 15) null and void, case closed 'N' October 8, 1931." There is nothing on the Washington tract book to indicate that the above entry was changed or revoked.

III. Contest 11761—Camp Bird Nos. 1 through 20 claims.[11]

Contest 11761 (Exhibit I-3) was originally initiated in 1927. On May 4, 1928, the Commissioner, General Land Office, issued a letter-decision declaring the claims null and void on the basis of the named contestees' failure to answer a contest complaint charging that annual assessment work "for the years ending July 1 of 1921 to 1927, inclusive, was not performed upon or for the benefit of the claims. None of the mining claimants made any appearance in the

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[10] The Washington tract book pages covering the lands included in the Atlas claims were placed in Exhibit GG—3 relating to the Camp Bird claims, and the Washington tract book pages with respect to the Camp Bird claims were placed in Exhibit GG—1 relating to the Atlas claims.

[11] All of the Camp Bird claims are involved in Civil Action 8680.

proceedings in order to protect their interests in the claims.

In a letter dated June 30, 1930, the Commissioner directed the Register to initiate new proceedings based on a charge of a continuing failure to perform annual assessment work for the year ending July 1, 1929. A complaint dated August 4, 1930, was addressed to the following persons, whom, it was thought, were the co-owners of the claims: "Leroy C. Albright, or his heirs or devisees; John E. Lowe, or his heirs or devisees. J. E. Billings, Charles W. Reed, Stephen A. Post, Charles Anderson." In a letter, dated March 10, 1931, to the Commissioner, O. J. Berry, of the General Land Office, stated that notices of contest had been served on several of the locators, but he suggested that new charges be preferred because the claims were posted with a Notice of Forfeiture for the assessment year ending July 1, 1930. In a letter dated July 6, 1931, the Commissioner directed the Register to serve notice on the suggested charges only on those parties who were not served with the August 4, 1930, complaint. Thereafter, a complaint dated July 14, 1931, charging, in essence, a continuing failure to perform assessment for the year ending July 1, 1930, was drafted with the following named as contestees: "Leroy C. Albright, J. E. Billings, Charles W. Reed, Charles Anderson, Stephen A. Post, J. C. Moore, dec'd., heirs: Mrs. Harry Kelly and Colleen Moore, (minor), John E. Lowe, Emma J. Boyd, dec'd, heir: Mrs. S. A. Post."

In a letter dated August 27, 1931, the Register advised the Commissioner that evidence of service of notice had been received on seven of the contestees, that the notice sent to Mrs. S. A. Post had been returned unclaimed, and that notice had not been sent

to John E. Lowe, whose address was unknown. In a letter-decision dated October 20, 1931, the Acting Commissioner declared the Camp Bird Nos. 1 through 20 claims null and void to the extent of the interests of the seven contestees thought to have been properly served with notice of contest. He stated:

> "The failures of contestees served with notices to file answers denying the charges were taken as admissions by them of the truth thereof, in view of which the Camp Bird Nos. 1 to 20, inclusive, oil shale placers are declared null and void to the extent of the interests of the parties served and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed to the extent of the interests of the parties served.
> "Advise the parties by ordinary mail."

Following is a list of the names of the persons who held record title to the Camp Bird Nos. 1 through 20 claims at the time of Contest 11761, according to the abstract of title submitted by the plaintiffs, as supplemented by information in the file for Contest 11761. Also shown are the addresses to which the complaints were mailed, the names of the persons who signed the post office return receipts for these registered letters, and the date of receipt of such letters.[12]

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[12] W. H. Post held an interest as an heir in Emma J. Boyd, an original locator who died intestate on September 29, 1921. It was not until 1959 that anyone bothered to determine the interest of Emma J. Boyd's heirs in the Camp Bird and other oil shale claims (Exhibit 259—Abstract entry 150).

Stephen A. Post held an interest as an original locator and as an heir of Emma J. Boyd.

Mrs. Harry Kelly and Colleen Moore held an interest as the widow and daughter of an original locator, J. C. Moore. Ap-

Claimant	Return receipt signed by—	Notice received
W. H. Post	Not named as a contestee	
Stephen A. Post, 229 North First St., Grand Junction, Colorado	Stephen A. Post	July 17, 1931
Leroy C. Albright, 958 Ouray Ave., Grand Junction, Colorado	Blanche Waters	August 9, 1930
J. E. Billings, 433 North 7th Ave., Grand Junction, Colorado	E. Elizondo	On or before August 25, 1930
Charles W. Reed, 611 Ouray Ave., Grand Junction, Colorado	E. Elizondo	On or before August 25, 1930
Charles Anderson, Shiprock, New Mexico	Charles Anderson	On or before August 26, 1930
Mrs. Harry Kelly, R.R. 4, Grand Junction, Colorado	Mrs. Harry Kelly	July 17, 1931
Colleen Moore, R.R. 4, Grand Junction, Colorado	Mrs. Harry Kelly	July 17, 1931
John E. Lowe	No letter sent because address unknown	

Although the Commissioner's decision of October 20, 1931, declared the claims to be null and void to the extent of seven of the nine named contestees, there is in the record proper proof of service of notice of contest only for Stephen A. Post and Charles Anderson, who were served with a copy of the August 4, 1930, complaint, and Colleen Moore and Mrs. Harry Kelly, who were served with copies of the July 14, 1931, complaint. Proof of service on the other named claimants does not meet the standards set forth in the decision *Union Oil Company of California et al., supra.* Thus the Commissioner's decision did not affect the interests of W. H. Post, who was not named as a contestee, John E. Lowe, whose address was unknown, Leroy C. Albright, J. E. Billings and Charles W. Reed.

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parently no proceedings were ever held to determine the interest of J. C. Moore's heirs in the Camp Bird and other oil shale claims.

Since John E. Lowe and Mrs. Stephen A. Post, who were named as contestees, remained unserved, Contest 11761 had not been completely closed on the books of the Denver Land Office when the *Ickes* decision was issued.

By a letter dated August 16, 1935, to the Commissioner from the Register, captioned "Transmitting Contest Record 11761. Dismissed and closed," Contest 11761 was closed on the records of the Denver Land Office and the case file was transmitted to the Commissioner's Office in Washington, D. C. The letter states:

> "Your letter . . . of July 29, 1935, . . . instructed this office to close all cases of adverse proceedings against mineral location or entries where the charge was failure to perform annual assessment work on the claims. Contest 11761 is closed on the records of this office under those instructions and the papers herewith transmitted.
>
> "Claimants have not been advised of this action as they have not filed answer to the charges."

As the Commissioner's letter-decision of October 20, 1931, closed Contest 11761 to the extent of seven of the nine named contestees, it is evident that the Register's August 6 letter could have the effect only of closing this contest to the extent of the two people who remained on the records of the land office as unserved claimants. And, if the word "dismissed," used in the caption of the transmittal letter, has any significant meaning at all, it must mean only that the contest was dismissed as to the two claimants who were then considered to be unserved claimants. The Register could not, of course, reverse the action of the Commissioner and dismiss the contest as to

those parties whose interests were closed out by the Commissioner's October 20, 1931, letter-decision.[13]

There is nothing in the file to show that the claimants took any action during the course of Contest 11761 to assert their alleged rights in the Camp Bird mining claims. Nor is there anything to show that they later disavowed their acquiescence in the declaration of invalidity of the claims. They did nothing to advise the Department that they had, or wished to reinstate, claims to the land. Although the Commissioner's decision was final, they could have exercised their right, provided by Rule 85 of the Department's Rules of Practice then in effect, to petition for an exercise of supervisory authority by the Secretary of the Interior. They did not, however, avail themselves of this right.

The Backing Sheet for Contest 11761 contains four entries. The first, dated July 6, 1931, merely notes the adverse proceedings. The second dated October 20, 1931, states "R. Locations null and void. Case closed—O—D—. . . Posted . . . October 26, 1931. . . ." The third entry dated March 13, 1943, stated "Reg. Insts. to, C166652—D . . ." Thus, there is nothing to show on this Backing Sheet, or elsewhere in the record, that the contest was reopened or that the decision issued therein was modified in any respect after the promulgation of the Supreme Court's *Ickes* decision or the Department's *Shale Oil Company* decision.

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[13] As noted in Footnote 9 in connection with the Atlas claims the July 29, 1935, letter from the Commissioner (Exhibit 72) dealt only with pending contests, and the subject contest was pending only as to the interests of the remaining unserved claimants. The contest had previously been closed as to the interests of all other parties by the Commissioner's letter-decision of October 20, 1931.

The contest docket page for Contest 11761 (Exhibit K) shows that the claims were declared null and void as to the parties served in 1931, that the parties were so advised, and that the case was closed pursuant to the instructions of July 29, 1935 (Exhibit 72). The contest docket page further shows that no subsequent action was taken with respect to the case until 1959 when the case file was received in the local office of the Bureau of Land Management.

The appropriate tract book pages in the Denver Land Office do not contain any reference to the contest proceedings or the decisions declaring the claims null and void (Exhibit GG-3—tract book pages 133, 134, 135, and 138). The tract book pages in the Washington Office of the Bureau of Land Management (Exhibit GG-1—tract book page 198)[14] refer to an entry under Section 17 of Township 4 South, which reads as follows: "Camp Bird Nos. 1 to 20 oil shale placers (in Sections 2, 3, 4, 9, 16 and 17) null and void, case closed 'N' October 20, 1931." There is nothing on the Washington tract book to indicate that the above entry was changed or revoked.

IV. Contest 12029—Carbon Nos. 1 through 4 and Elizabeth J. Nos. 1 through 12 claims.[15]

Contest 12029 (Exhibit F) was originally initiated by a complaint dated June 26, 1929. The complaint alleged that annual assessment work had not been performed for the years ending July 1, 1927, and July 1, 1928. The contestees named in the complaint

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[14] The Washington tract book pages covering the lands included in the Camp Bird claims were placed in Exhibited GG—1 relating to the Atlas claims.

[15] Civil Action 8685 involves the Carbon Nos. 1 through 5 and the Elizabeth J. Nos. 1, 2, and 4 through 12 claims.

were Genevieve Juhan, Glenwood Springs, Colorado, L. Z. Harrison, 160 Broadway, New York, New York, Amos F. Keene, 106 E. 85th Street, New York, New York, Leon Levy, 475 Fifth Avenue, New York, New York, Joseph B. Umpleby, Norman, Oklahoma, Winifred Robinson, 2204 Adams Ave., Scranton, Pennsylvania. An answer was filed July 30, 1929, by Malcolm Lindsay, an attorney for L. Z. Harrison, Amos F. Keene, Leon Levy and Joseph B. Umpleby, named as contestees, and Sam Levy, 475 Fifth Ave., New York, New York, and H. C. Wolf (no address given), who were not named as contestees, but who were alleged to be co-owners of the claims. The claimants admitted no assessment work was done as charged, but alleged that the United States could not contest the claims on this ground.

On July 31, 1929, the District Law Officer for the General Land Office filed a motion for judgment by confession on the basis of the claimants admission of the truthfulness of the charge in the contest complaint. In a response to the motion, filed August 1, 1929, the claimants requested suspension of the contest until a decision was rendered in the case of *Wilbur* v. *Krushnic*, then pending before the Supreme Court. By a letter dated September 24, 1929, the case was transmitted to the Commissioner for his consideration of the motion for judgment by confession.

In a letter dated June 4, 1930, the Commissioner told the Register to amend the charge in contest 12029 to allege a continuing failure to perform annual assessment work for the year ending July 1, 1929, and a taking of the lands by the United States for its own uses and purposes by reason of the default in assessment work, and to serve notice of the new charge on the claimants. A complaint dated

June 9, 1930, was addressed to the same persons as the one drafted in 1929. The abstracts of title in the patent application files of the plaintiffs show, however, that at the time of contest the record title to the Carbon Nos. 1 through 4 and Elizabeth Nos. 1 through 12 claims was in the six persons who answered the 1929 contest complaint, i.e., Wolf, Harrison, Umpleby, Keene and the two Levys. On July 8, 1930, those persons answered the complaint, admitting the charge therein, but alleging that the United States could not contest the claims on this ground.

In letter-decision dated July 23, 1930, the Commissioner overruled the contentions in the claimants' answer. This decision reads in part as follows:

> "The fact that the claims were valid existent claims at the date of the leasing act, and that the claims have not been abandoned, does not excuse the claimants from maintaining the claims by the performance of annual assessment work.
>
> "The contentions of the contestees are overruled.
>
> "While it may be inferred from the statement in the answer that work was not resumed, after the default in the assessment work for the year ending July 1, 1929, and prior to time notice of the challenge on behalf of the United States was served on the contestees, nevertheless contestees will be allowed 30 days from notice in which to file answers denying such to be the case, if in accordance with the facts, or to appeal to the Secretary of the Interior; in default of action by the contestees, within the time allowed, the truth of the charge will be taken as admitted, and the claims will be declared null and void, without further notice."

On August 28, 1930, the claimants filed an appeal to the Secretary of the Interior in which they again alleged, in essence, that the United States could not challenge a mining claim on the basis of a failure to perform annual assessment work and alleged that the Commissioner erred in not granting them a hearing. By a letter dated September 18, 1930, the claimants requested that a decision in the contest be deferred until after a decision had been rendered in the case of *United States* v. *Federal Shale Oil Company* (Exhibit X). This request was granted, and, in a decision dated November 29, 1930, the Assistant Secretary affirmed the Commissioner's July 23, 1930 decision on the basis of the decision in the *Federal Shale Oil Company*. The Secretary's decision was transmitted to the contestees' attorneys by a letter dated December 8, 1930, signed by the Assistant Secretary of the Interior. This letter reads as follows:

> "Enclosed find copy of Department decision in above-entitled case. See Rule 83, Rules of Practice, as amended October 25, 1915."

It is significant that the letter calls the contestees' attention to Rule 83 of the Rules of Practice. Rule 83 provided:

> "Motions for rehearing before the Secretary must be filed within 30 days after receipt of notice of the decision complained of and will act as a supersedeas of the decision until otherwise directed by the Secretary. Such motions, briefs, and arguments must not be served on the opposite party and must be filed directly with the Secretary of the Interior, Washington, D.C."

There is nothing in the record to show, however, that a motion for rehearing was filed either before or after the Supreme Court's *Ickes* decision, and the Department's *Shale Oil Company* decision.

In a letter dated August 6, 1931, the Register advised the Commissioner that the claimants had failed to file an answer denying the charges in the June 9, 1930, complaint within 30 days after their attorney had been served with a copy of the Assistant Secretary's November 29, 1930, decision. He recommended that the contested claims be declared null and void pursuant to the self-executing invalidation provisions of the Commissioner's July 23, 1930, decision. Accordingly, in a letter-decision dated August 25, 1931, the Commissioner declared the Carbon Nos. 1 through 4 and the Elizabeth J. Nos. 1 through 12 claims null and void and closed the case. This letter reads in part as follows:

> "The failures of the contestees to file answers denying the charge are taken as admissions by them of the truth thereof, in view of which the Carbon Nos. 1 to 4, inclusive, and Elizabeth J. Nos. 1 to 12, inclusive, oil shale placers, are declared null and void in their entirety and the United States has taken possession of the lands within the claims for its own uses and purposes. The case is closed.
>
> "Advise the parties thereof by ordinary mail."

There is nothing in the record of Contest 12029 to show that the claimants thereafter made any effort to assert any rights to the lands embraced by the Carbon and Elizabeth J. claims. They did not file a motion for rehearing under Rule 83. They did not otherwise ask for a reconsideration of their case, nor did they file a motion for an exercise of the super-

visory authority of the Secretary, as was their right, pursuant to Rule 85.

It should be emphasized that there is nothing in the record to show that the Department on its own motion took any action to modify the invalidation decisions previously issued. It appears that the case file remained in the Department's archives until October of 1959, when it was removed and sent to the Department's State Supervisor for Colorado pursuant to his request. The last entry on the Backing Sheet for the contest is dated October 25, 1931. It reads "R. Locations null and void. O-D . . . Posted . . . September 1, 1931. . . ."

The contest docket page for Contest 12029 (Exhibit K) shows that the claims were declared null and void in their entirety in 1931 and that no further action was taken with respect to the case until 1959 when the case file was received in the local office of the Bureau of Land Management.

The appropriate tract book pages in the local and office in Denver do not contain any reference to the contest proceedings or the decisions declaring the claims null and void (Exhibit FF—tract book pages 239, 240). The tract book pages in the Washington Office of the Bureau of Land Management (Exhibit FF—tract book page 84) refer to an entry under Section 36, Township 4 South, which reads as follows:

> "Carbon Nos. 1, 2, 3, 4 and Elizabeth J. Nos. 1 to 12 oil shale placer locations (in Section 33, 34, 35, and 36) null and void, case closed 'N', August 25, 1931."

There is some indication that a line may have been drawn through the above entry. Such action would not, however, be consistent with the failure to take any action on similar entries in the tract books re-

lating to hundreds of other oil shale placer mining claims (see, for example, the tract book pages covering the lands in the other claims involved in Civil Action 8680 and the numerous tract book pages in Exhibit RR).

V. Contest 12972—Northwest, Northeast, Southeast and Southwest claims.[16]

Contest 12972 (Exhibit C) was initiated after the issuance of the Supreme Court's *Krushnic* decision. A complaint dated August 3, 1931, charged that there had been a continuing failure on the part of the claimants to perform annual assessment work for the year ending July 1, 1931.

The complaint was addressed to B. T. Napier, deceased, heirs: Mrs. B. T. Napier, Miss St. Clair Napier, and B. T. Napier, Jr., all of Glenwood Springs, Colorado; C. R. McCarthy, and W. H. Farnum, also of Glenwood Springs, Colorado, Elenor Armstrong, Luther A. Armstrong and Robert Eaton, all of DeBeque, Colorado; Morgan McCann, deceased heirs: Mrs. Josephing McCann Leahy and Miss Lena McCann, at St. Anthony's Home, DeBeque, Colorado; H. D. Locke, administrator of the estate of Morgan McCann, DeBeque, Colorado; and Mark Love, deceased, heir: Mrs. Joe Love, Buena Vista, Colorado. A complaint dated August 13, 1931, with a similar charge, was addressed to J. A. McCann, North William Street, Dayton Ohio, and Frank McCann, Pittsburg, Kansas.

The abstract of title submitted by the Plaintiffs as a part of their patent application shows that the record title to the claims was in all of the contestees

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[16] All but the Southwest claim are involved in Civil Action 8691.

except Barnette T. Napier, Jr., who had conveyed his interest in the claims to his mother on May 6, 1922.

Of the named contestees, Mrs. B. T. (Carrie St. Clair) Napier, St. Clair Napier, W. H. Farnum and C. R. McCarthy filed an answer to the complaint. In addition, there are in the record post office return receipts signed by Robert Eaton, J. A. McCann, and "Jo" (Mrs. Joe) Love, which are adequate proof of service of notice of the contest. In addition, in a letter dated August 16, 1931, J. A. McCann acknowledged receipt of the complaint, denying, however, that he had any knowledge of, or interest in, any oil shale claims. There is, on the other hand, no proper proof of service of notice of contest on Luther Armstrong, Mrs. Josephine McCann Leahy, Miss Lena McCann, Frank McCann and Elinor Armstrong, none of whom signed a post office return receipt, filed an answer to the complaint, or otherwise acknowledged receipt of a contest complaint.[17]

In their answer filed September 21, 1931, the Napiers, McCarthy and Farnum, through their attorney, W. F. Noonan, denied assessment work was not

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[17] While the Commissioner found that all parties in interest had been properly served and, as will be subsequently noted, declared the Northwest, Northeast, and Southeast claims null and void in their entirely. The Interior Department in a decision dated December 13, 1965, supplementing the *Union Oil Company of California* decision, *supra* (A-29560, Supp. B) concluded as follows:

> "The return receipts for the registered letters addressed to Luther Armstrong, Mrs. Josephine McCann Leahy, Miss Lena McCann, Frank McCann and Elinor Armstrong were however, signed by persons other than the addressees, and there is nothing in the record to show that the person signing had been authorized by the addressees to receive such letters. Hence, the receipts do not constitute proper proof of service of notice of contest on these claimants."

performed for the benefit of the Southwest claim, and alleged generally that a failure to perform annual assessment work was not a proper basis for contest by the United States.

By a letter dated September 9, 1931, the answering claimants were notified to appear and offer evidence on October 21, 1931, before a Notary Public in Glenwood Springs, Colorado, the letter also stating that the final hearing would be held on November 12, 1931, before the Register of the Denver Land Office. The October 21 hearings consisted of reading a stipulation into the record. The stipulation described the assessment work done for the Southwest claim, admitted the truth of the assessment work charge as to the remaining claims, and stated in part as follows:

> "That it is further agreed that the case may be submitted to the Commissioner of the General Land Office for adjudication upon this stipulation of facts, together with the legal questions raised by way of plea to jurisdiction and demurrer in the answer filed by the answering defendants in this cause."

In a letter-decision dated December 23, 1931, the Commissioner declared the Northwest, Northeast and Southeast claims null and void on the basis of the admitted failure to perform annual assessment work. The decision states:

> "The validity of the Northwest, Northeast and Southeast placers having been challenged by the government after failure to perform the annual labor for the year ending July 1, 1931, and before work was resumed thereon, the said claims are declared to be null and void subject to answering contestees' right of appeal within 30 days from notice.

"It appearing that work to the value of $100.00 was performed upon the Southwest oil shale placer for the year ending July 1, 1931, the contest as to that claim is dismissed and the case as to it is closed.

"Advise the answering contestees hereof and that in the absence of appeal within the time allowed, the Northwest, Northeast and Southeast placers will be declared null and void and the case closed without further notice."

On February 3, 1932, the Register transmitted return receipts to the Commissioner as proof of service of the Commissioner's letter-decision of December 23, 1931, on the contestees, stating that no appeal had been filed. By a letter-decision dated February 23, 1932, the Acting Commissioner declared the claims null and void and closed the case. This decision reads as follows:

"Referring to the case, the claimant's name and serial number of which appear above, the decision of this office, date of which is noted in the caption hereof, has become final because of the failure of the parties in interest to appeal therefrom.

"You will note on your records that the case is hereby closed, and transmit copy of this letter to the parties in interest by ordinary mail.

"Your report in this case by letter of February 3, 1932, shows service was made upon the parties by registered mail on December 31, 1931.

"The Northeast, Southeast and Northwest oil shale placers in Sec.27, T.7S., R.98W., 6th P.M. are declared null and void. The United States has taken possession of the lands within the

> claims for its own uses and purposes, and the case is closed."

There is no evidence in the file for Contest 12972 to indicate in any way that the claimants made any effort to disavow their acquiescence in the Commissioner's decision of December 23, 1931. No attempts were made, as far as the record shows, to reinstate the entries through the filing of a motion for an exercise of the Secretary's supervisory authority pursuant to Rule 85 of the Department's Rules of Practice. Nor is there any evidence in the record upon which it may be inferred that the Department, on its own motion, vacated or otherwise modified the action previously taken.

The contest docket page for Contest 12972 (Exhibit K) shows that the case was closed in 1932 with the claims being declared null and void and that no further action was taken with respect to the case until 1959 when the case file was received in the local land office of the Bureau of Land Management.

The appropriate tract book pages in the local land office in Denver do not contain any reference to the contest proceedings or the decision declaring the claims null and void (Exhibit EE—tract book page 33). The tract book pages in the Washington Office of the Bureau of Land Management (Exhibit EE —tract book page 57) contain the following notation:

> "Northwest, Southeast and Northeast oil shale placers null and void, case closed 'N' February 23, 1932."

There is nothing on the Washington tract books to indicate that the above entry was changed or revoked.

VI. Contest 12039—The Oyler Nos. 1 through 4 claims.

In a letter dated July 16, 1925, addressed to the Secretary of the Interior, the Acting Secretary of the Navy commented on the possible existence within the Naval Oil Shale Reserves Nos. 1 and 3 in Colorado and No. 2 in Utah of some unpatented oil shale claims. He requested the Secretary of the Interior to undertake an investigation of this matter with a view to having the Naval Oil Shale Reserves definitely established as to their limits and area. Subsequently dated documents in file for Contest 12039 (Exhibit A) show that the Secretary acted upon the request made by the Department of the Navy, and an investigation of the oil shale claims within these Reserves was undertaken. Among the claims investigated were the Oyler Nos. 1 through 4 claims. As a result of these investigations adverse proceedings were initiated by a complaint dated June 28, 1929, which charged that the $100.00 worth of assessment work had not been done on each of the claims since the date of the Mineral Leasing Act, and that reported amendments of the claims were invalid to the extent they embraced lands not included in the claims as originally located.[18] An answer denying the

[18] The mineral examiner in his report of February 28, 1929, noted that:

> "In examining the records of the Sheridan Placer Claims, I find that there are 21 of these which were located September 25, 1916, the same date as the Oyler claims were located, thus making a total of 25 claims located on unsurveyed ground in one day. This appears to me to be a rather far fetched proceeding to claim that 25 160-acre tracts could be surveyed, discoveries made and location notices posted in one day in particularly rough country, with precipitous cliffs and side hills."

However, no charge was made as to the validity of the original locations.

charges and alleging that any default in the performance of assessment work "would not be available to the United States" was filed by the Index Shale Oil Company through C. J. Pfusch as Receiver.

In a letter dated November 12, 1930, the Acting Commissioner advised the Chief of Field Service, Denver, Colorado, that the charge in the 1929 complaint was "ineffective" in view of the Supreme Court's *Krushnic* decision and told him to take appropriate action. A letter from the Chief of Field Division to the Register, dated July 20, 1931, directed the drafting of a new complaint which was to charge the claimant with a continuing failure to perform adequate assessment work for the year ending July 1, 1931. A complaint containing such a charge, dated July 22, 1931, was addressed to "The Index Shale Oil Co., Directors: W. T. Mack, C. W. Church, J. W. Lawrence, J. L. Bickel, C. J. Pfusch, C. J. Pfusch, Receiver." On August 14, 1931, the record shows that W. T. Mack's address was 622 Denham Building, Denver, Colorado; C. W. Church's 622 Denham Building, Denver, Colorado; J. W. Lawrence's Point Pleasant, New Jersey; J. L. Bickel's 423 1st Street, Westfield, N.J.; and C. J. Pfusch's 163 Marine St., Ocean Park, California.[19]

On August 14, 1931, an answer was filed by H. L. Brown as agent for Index denying the charge of de-

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[19] In explaining why other charges were not brought against the claims, the Acting Secretary of the Interior by a letter dated August 8, 1931, advised the Secretary of the Navy as follows:

> "If this charge [default in assessment work] is not denied by the claimants, or, if after answer is filed, the charge is proven at a hearing, the claims will be declared null and void, and there will be no necessity for attacking the claims on other ground."

fault in assessment work and alleging that any such default "is not available to and could not be taken advantage of by the United States." By a letter dated September 1, 1931, the Commissioner advised the Register as follows:

> "This case falls within the instructions contained in office letter 'N' of August 17, 1931 (1383406) approved by the Secretary of the Interior, that where answers raising issues of fact are filed, which also contain pleas to the jurisdiction of this Department, the pleas will be considered when the hearing records are adjudicated, in view of which the answer is herewith returned and you will proceed in the matter so that hearing may be had."

On September 25, 1931, H. L. Brown as agent and C. J. Pfusch as receiver for Index, and Penelope Chase Brown, Watson Current, Inglis M. Uppercu and Schuyler C. Schieffelia, the alleged trustees, if any, of said Index Shale Oil Company, waived service of process and notice and adopted the answer filed by H. L. Brown.

A hearing was held October 8, 1931, William F. Noonan appearing on behalf of the contestees. The parties entered into a stipulation which provided, among other things, that no assessment work was done as charged in the contest complaint.

By a letter-decision dated December 2, 1931, the Commissioner declared the claims null and void. Portions of this letter-decision read as follows:

> "The record has now been examined and it appears that certain portions of the claims, as now described, are invalid because they were not embraced in the claims as originally located, but

were included therein by amendment subsequent to the date of passage of the leasing act of February 25, 1920 (41 Stat. 457). The land added by amendment having been withdrawn by executive order for inclusion in the Naval Oil Shale withdrawal, and by act of Congress (the Leasing Act, supra) was not subject to location, and its attempted inclusion through amendment of the original locations was without effect. As to such portions, therefore, the claims are held to be null and void."

* * * *

"It is admitted that a challenge by the United States to the valid existence of the Oyler claims was made while the owners thereof were in default in the performance of the annual labor for the year ending July 1, 1931, and before work was resumed. The right of the Government to make such a challenge is clearly recognized by the Supreme Court.

"The Oyler claims Nos. 1, 2, 3, and 4, are, therefore, held to be null and void.

"Advise contestees hereof, and that in the absence of an appeal from this decision to the Secretary of the Interior within 30 days from notice said decision will become final without further notice."

On January 9, 1932, the attorney for the claimants filed an appeal to the Secretary of the Interior from the Commissioner's decision. The appeal alleged in part that the Department of the Interior was without jurisdiction to declare claims null and void for failure to perform assessment work. By a decision dated March 10, 1932, the Assistant Secretary affirmed the Commissioner's decision and held the

claims to be null and void for the reasons stated in the *Federal Shale Company* case (Exhibit X). By a letter dated March 14, 1932, signed by the Assistant Secretary of the Interior a copy of the Department's March 10 decision was transmitted to the attorneys for the claimants. The last sentence of this letter reads, "See Rule 83, Rules of Practice, as amended October 25, 1915." Although the claimants' attention was specifically directed to Rule 83, which provides for the filing of a motion for rehearing within 30 days, there is nothing in the record to show that the claimants availed themselves of this opportunity. Thus, on April 21, 1932, the Assistant Secretary transmitted the case file to the Commissioner of the General Land Office, stating that the Department's decision had become final. Subsequently, in a letter-decision dated April 27, 1932, the Commissioner addressed the following comments to the Register:

> "Referring to the case, the claimant's name and serial number of which appear above, you are advised that the decision of the Department, the date of which is noted in the caption hereof, has become final. A copy of said decision is inclosed for your information and files, and one for the contestee company.
>
> "You will note on your records that the case is hereby closed.
>
> "The Oyler Nos. 1 to 4, inclusive, oil shale placers are declared to be null and void and the United States has taken possession of the lands within the claims for its own uses and purposes."

The file of Contest 12039 contains a copy of a letter prepared for the Acting Secretary of the Interior to the Secretary of the Navy, dated October

31, 1935. This letter written after the *Ickes* decision refers to a letter of Secretary Ickes dated November 1, 1933, that contained a list of oil shale placer claims, including the Oyler claims. The letter discusses the assessment work contests, stating specifically:

> "All previous action taken upon such charges in the cases referred to [in the November 1, 1933 letter] therefore is without effect and void. The status of the claims so far as this Department is concerned is that they are subsisting claims. . . ." [20]

The record does not contain any evidence that the claimants attempted to have the Secretary exercise his supervisory authority to re-establish the validity of the claims on the records of the Department after the promulgation of the *Ickes* decision. It appears that the records of Contest 12039 remained in the Department's archives until shortly after November 20, 1957, since there is in the file a memorandum of that date, to the Director, Bureau of Land Management, from the State Supervisor, Colorado, request-

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[20] There is no indication that this letter was released to the public or that anyone, and in particular the mining claimants, took any action or relied in any way upon the conclusions expressed in the letter. In fact, Pacific Oil Company, the patent applicant, stated in its appeal before the Department of the Interior as follows:

> "Pacific Oil Company's first knowledge of the old contest proceedings was obtained through and not until the Manager's Decision of February 16, 1962. As has recently come to light, the file in the old Contest Proceedings involving the Oyler claims and the files in a number of other similar Contest Proceedings involving other placer claims, for most of the 29 years referred to in the Manager's Decision, have been buried in the Archives in Arlington, Virginia." (page 42)

ing that the case file be sent to Colorado for review in connection with the adjudication of the patent application (Colorado 012327) pertaining to the Oyler claims. A memorandum dated January 27, 1958, to the Director from the State Supervisor transmits the contest file to Washington in order that it might be returned to the archives at Alexandria, Virginia.

It should be emphasized that there is nothing in the record to show that the decisions declaring the Oyler claims to be null and void for a failure to do assessment work were at any time modified or vacated either at the request of persons claiming to have an interest in these oil shale claims, or as a result of action instituted on motion of the Department.

The contest docket page for Contest 12039 (Exhibit K) shows that the claims were declared null and void in 1932 and that no further action was taken with respect to the case until the 1950s when the case file was sent to the local office of the Bureau of Land Management.

The appropriate tract book pages in the local land office do not contain any reference to the contest proceedings or the decision declaring the claims null and void (Exhibit DD—tract book page 16).[21] The

[21] Historically a mining claimant has had no obligation to notify the land office of the location of a mining claim. The records of the land office would normally be noted only in the event the mining claimant filed an application for a mineral patent. Presumably the tract book records in the local land office were not noted with entries showing the decisions declaring oil shale claims null and void inasmuch as there was no corresponding entry showing the existence of the mining claims. The reason for noting the tract book records in the Washington office is not known. However, the contest docket books maintained by the local land office did contain, as shown

tract book pages in the Washington Office of the Bureau of Land Management (Exhibit DD—tract book page 220) contain the following notation:

> "Oyler Nos. 1, 2, 3 and 4 oil shale placers (in Sections 10, 11, 12) null and void, case closed 'N' April 27, 1932."

There is nothing on the Washington tract books to indicate that the above entry was changed or revoked.

VII. Summary

The 48 Bute claims were declared null and void to the extent of the interests of the mining claimants who were served and who failed to enter any appearance in the proceedings by a decision dated July 3, 1931. The claims were declared null and void as to the remaining interests by a decision dated November 3, 1931, as a result of a failure of the parties to enter any appearance in the proceedings. While the Commissioner of the General Land Office was of the opinion that proper service had been obtained on all of the mining claimants, a question does exist in view of the recent standards adopted by the Interior Department in the supplemental Union Oil Company decisions as to the extent of a portion of the interests that may not have been affected by the 1931 decision as a result of improper service.[22] There is

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by the contest docket pages, information concerning the contest proceedings.

[22] If the 1931 decisions are determined to be effective, then the Interior Department can determine the extent to which they might be ineffective for failure to obtain personal jurisdiction over some of the parties as was done in the *Union Oil Company* decisions in connections with patent applications. As yet, a patent application has not been filed covering the 46 Bute claims in Civil Action 8680.

nothing to indicate that any of the mining claimants asserted any interest in any of the Bute claims at any time during or subsequent to the contest proceedings until the late 1950s when Tell Ertl searched out alleged holders of fractional interests and forfeited out the alleged holders of the remaining interests. Nor is there anything to indicate that the 1931 decisions were specifically modified, vacated or changed in any way by the Interior Department.

The 18 Atlas claims were declared null and void to the extent of the interests of the mining claimants who were served and who failed to enter any appearance in the proceedings by a decision dated October 8, 1931. The contest proceeding was still pending as to one party believed by the General Land Office to have an interest in the claim when the *Ickes* decision was rendered. Pursuant to a letter of July 29, 1935, relating to pending cases, the contest was closed as to the interest of the one remaining party who had not been served. Again, a question exists in view of the recent standards adopted in the supplemental *Union Oil Company* decisions as to the extent of the interests that may not have been affected by the 1931 decision as a result of improper service.[23] There is nothing to indicate that any of the mining claimants asserted any interest in any of the Atlas claims at any time during or subsequent to the contest proceedings until the 1950s when Tell Ertl searched out alleged holders of fractional interests and forfeited out the alleged holders of the remaining interests. Nor is there anything to indicate that the 1931 decision declaring the claims null and void as to the interests of the parties served was specifically modified,

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[23] As yet, a patent application has not been filed covering the 9 Atlas claims in Civil Action 8680.

vacated or changed in any way by the Interior Department.

The 20 Camp Bird claims were declared null and void to the extent of the interests of the mining claimants who were served and who failed to enter any appearance in the proceedings by a decision dated October 20, 1931. The contest proceedings had not been completely closed and was still pending as to two parties believed by the General Land Office to have an interest in the claims when the *Ickes* decision was rendered. Pursuant to the letter of July 29, 1935, relating to pending cases, the contest was closed as to the interest of the two remaining parties who had not been served. Again, the recent standards adopted in the supplemental *Union Oil Company* decisions raise a question as to the extent of a portion of the interests that may not have been affected by the 1931 decision as a result of improper service.[24] There is nothing to indicate that any of the mining claimants asserted any interest in any of the Camp Bird claims at any time during or subsequent to the contest proceedings until the 1950s when Tell Ertl searched out alleged holders of fractional interests and forfeited out the alleged holders of the remaining interests. Nor is there anything to indicate that the 1931 decision declaring the claims null and void as to the interests of the parties served was specifically modified, vacated or changed in any way by the Interior Department.

The mining claimants entered an appearance in the contest proceedings involving the 4 Carbon and 12 Elizabeth claims and specifically questioned the authority for the Interior Department to declare the

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[24] As yet, a patent application has not been filed covering the 20 Camp Bird claims in Civil Action 8680.

claims null and void on the assessment work charge. The mining claimants appealed to the Secretary from an adverse decision of the Commissioner of the General Land Office. The Secretary in a decision dated December 8, 1930, concluded that there was a proper basis to declare the claims null and void for failure to perform the annual assessment work in view of the provision in Section 37 of the Mineral Leasing Act that claims must be "maintained" in compliance with the laws. Upon the mining claimants subsequent failure to specifically answer the charge in the contest complaint, the claims were declared null and void by a decision of the Commissioner dated August 25, 1931. There is nothing to indicate that any of the mining claimants asserted any interest in any of the Carbon and Elizabeth claims at any time subsequent to the contest proceedings until the 1950s when Wasatch Development Company searched out the alleged holder of a fractional interest and forfeited out (with the exception of Umpleby) the alleged holders of the remaining interests. Nor is there anything to indicate that the 1931 decision declaring the claims null and void was specifically modified, vacated or changed in any way by the Interior Department.

In the contest proceedings involving the Northwest, Northeast and Southwest claims some of the mining claimants failed to enter any appearance in the proceedings, and some appealed and specifically questioned the authority for the Interior Department to declare the claims null and void on the assessment work charge. Following a hearing the Commissioner by a decision dated December 23, 1931, declared the claims null and void on the basis of the admitted failure to perform the annual assessment work subject, however, to the right of appeal to the Secretary.

The parties were specifically notified of their appeal rights, and when the appeal period expired the Commissioner by a decision of February 23, 1932, declared the claims null and void and closed the case. In connection with the patent application file for these claims the Department of the Interior has concluded in a supplemental *Union Oil Company* decision that the Commissioner was in error in holding that proper service was obtained on five of the parties named who did not appear in the proceedings. There is nothing to indicate other than a notice in lieu of annual assessment work recorded in 1949 that any of the mining claimants asserted any interest in any of the claims subsequent to the contest proceedings until forfeiture proceedings were commenced in the 1950s. There is nothing to indicate that the 1932 decision declaring the claims null and void was specifically modified, vacated or changed in any way by the Interior Department.

The mining claimants entered an appearance in the contest proceedings involving the four Oyler claims and specifically questioned the authority for the Interior Department to declare the claims null and void on the assessment work charge. Following a hearing the Commissioner by a decision dated December 2, 1931, declared the claims null and void on the basis of the admitted failure to perform the annual assessment work subject, however, to the right of appeal to the Secretary. An appeal was taken and the Secretary in a decision dated March 10, 1932, concluded that there was a proper basis to declare the claims null and void under the Department's construction of Section 37 of the Mineral Leasing Act and affirmed the Commissioner's decision declaring the claims null and void. Upon the mining claimant's failure to file a motion for rehearing the case

was closed on April 27, 1932. There is nothing to indicate, other than the recordation of notices in lieu of annual assessment work, that the defunct corporation which held the record title to the claims asserted any interest in the claims subsequent to the contest proceedings until the Bureau of Mines began experimental operations under the Synthetic Liquid Fuels Act and constructed certain facilities on the lands embraced within the claims. There is some indication that some within the Interior Department were of the opinion that the 1932 decision declaring the claims null and void was without effect. However, there is nothing to indicate that the 1932 decision was specifically modified, vacated or changed in any way by the Interior Department.

APPENDIX D

History of the Specific Lands Embraced By The Oil Shale Claims in Question

I. The Bute Nos. 1 through 19, 21 through 28, and 30 through 48.

These claims were located in December of 1919 and January of 1920, and cover all of the lands in Sections 7 through 18, inclusive, Township 4 South, Range 96 West, with the exception of the SW¼ of Section 10 and the NE¼ of Section 16 covered by the Bute Nos. 20 and 29. The history of these lands is shown by Exhibit GG—2. This exhibit contains copies of (1) the tract book pages previously maintained in the Denver land office containing entries relating to the subject lands, (2) the plat book pages maintained in the Denver land office relating to the subject lands, (3) the tract book pages maintained in the Washington office of the Bureau of Land Management containing entries relating to the subject lands, (4) the plat book pages maintained in the Washington office of the Bureau of Land Management relating to the subject lands, (5) the pages from the recently installed records of the Denver land office covering all actions that have occurred with respect to the subject lands, (6) the serial register pages from the serial register books of the Denver Land office containing entries in abstract form with respect to certain types of action that have taken place with respect to the subject land, and (7) a diagram showing the lands covered by the subject claims.

Chronologically the history of the action that has taken place with respect to these lands as shown by the records of the Bureau of Land Management is as follows.

In 1916 the entire township was classified as mineral lands valuable as a source of petroleum and nitrogen by reason of the prospective value of the oil shale believed to underlie the lands (Exhibit N).

At the time the Bute claims were located the land was vacant, unappropriated public domain with the exception of 240 acres in parts of Sections 10 and 11 which were included in a homestead entry that had been filed in April of 1919 (GS 016439). The lands in this entry were subsequently patented under the homestead laws in 1927 with a reservation to the United States of the oil shale under the Act of July 17, 1914, 38 Stat. 509 *et seq.*, 30 U.S.C. 121, *et seq.*[1]

On July 12, 1920, a homestead entry (GS 019445) was allowed covering lands in portions of Sections 16 and 17. Patent was subsequently issued in 1922 covering 160 acres with a reservation to the United States of the oil shale under the Act of July 17, 1914, *supra.*[2]

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[1] Compare the decision of the Supreme Court in *Bunker Hill and Sullivan Mining and Concentrating Co.* v. *United States* (1913), 226 U.S. 548, and the decision of the Interior Department in *Sullivan et al.* v. *Tendolle* (1921) 48 L.D. 337, with the decision of the Interior Department in *James W. Bell* (1927), 52 L.D. 197, with respect to the availability of lands for mineral location covered by a valid and subsiding homestead entry.

[2] There is nothing to indicate that the mining claimants protested, contested or took any action as of the time the homestead entries were made, during the time that the necessary homestead improvements were being completed, or during the time that notice of intention to submit final proof under the homestead laws was published in the Grand Valley News. Apparently the mining claimants were unaware of the activity of the homestead entrymen or were not sufficiently interested to assert a paramount right to the surface of the lands by reason of the mining claims.

On June 22, 1921, two homestead entries (GS 019030 and GS 019031) were allowed covering lands in portions of Sections 14 and 15 and other lands not within the limits of the subject claims. Patents were subsequently issued in 1922 covering 240 acres in one homestead (of which 80 acres conflicted with the subject claims) and 320 acres in the other homestead, all of which conflicted with the Bute claims.[3] Again, there was a reservation of the oil shale believed to underlie the lands to the United States.

During 1920 and 1921 applications were filed for five other agricultural entries covering lands within the area of the Bute claims (GS 109446, GS 019448, GS 019604, GS 021356 and GS 021357). These entries were either withdrawn or cancelled between 1922 and 1928.[4]

During 1927 five applications were filed for oil and gas prospecting permits under the Mineral Leasing Act of February 25, 1920. The applications and resulting permits (D-038961, D-038962, D-038963, D-038979 and D-038958) covered practically all of the lands within the Bute claims. Prospecting permits were issued by the land office on the five applications during 1927 and 1928. Three of the permits (D-038961, D-038958 and D-038979) remained in existence until 1940 when they were cancelled. The other two permits (D-038962 and D-038963) remained in existence until December of 1938 when they were exchanged for oil and gas leases. The oil

[3] Again, the mining claimants were either unaware of the activity of the homesteaders or were not interested in asserting a prior right to the surface of the lands.

[4] In two of the entries, however (GS 019446 and GS 019448) a notice was published in the Grand Valley News in 1922, but again the mining claimants made no attempt to protest or contest the entries.

and gas leases were subsequently relinquished during the early 1940s.[5]

On April 15, 1930, by Executive Order No. 5327 the entire township was withdrawn under the Act of June 25, 1910 (36 Stat. 847), as amended by the Act of August 24, 1912 (37 Stat. 497), from lease or other disposal and reserved for the purpose of investigation, examination and classification (Exhibit Q).

On April 3, 1931, the Act of February 28, 1931 (46 Stat. 1484) was construed to permit stock-raising homestead applications to be made for lands covered by the Executive withdrawal of April 15, 1930 (Exhibit Q).

By Executive Order of February 6, 1933, the oil shale withdrawal of April 15, 1930, was modified to permit the issuance of oil and gas permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

On May 13, 1935, the oil shale withdrawal of April 15, 1930, was further modified to permit the issuance of sodium permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

The entire township was withdrawn on July 23, 1934, from settlement, location, sale or entry and reserved for classification and pending determination of the most useful purpose such land could be put to under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) (Exhibit R). This action was subsequently cancelled on March 28, 1939.

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[5] Again, there is nothing in the records of the Bureau of Land Management to indicate that any protest, contest or any other action was taken by the mining claimants in connection with the issuance of prospecting permits and leases covering most of the lands included within the subject mining claims.

On September 19, 1934, the entire township was temporarily withdrawn from disposal of any kind subject to any and all existing valid rights until the matter of the permanent restoration to the Ute Indians as authorized by Section 3 of the Act of June 28, 1934 (48 Stat. 964) could be given appropriate consideration (Exhibit P). This withdrawal was revoked on December 8, 1938, pursuant to Section 6 of the Act of June 28, 1938 (52 Stat. 1209) which prohibited the restoration of certain lands in the State of Colorado to tribal ownership under the provisions of the Act of June 18, 1934 (Exhibit P).

Shortly after the passage of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) the lands within the Bute claims were placed in a Grazing District. Grazing permits and/or licenses have been issued under the Taylor Grazing Act covering the lands within the Bute claims over the past 30-year period (Exhibit KK).

During 1951 seven applications for oil and gas leases under the Mineral Leasing Act of February 25, 1920, were filed with oil and gas leases subsequently being issued (C 02412, C 03018, C 03021, C 03189, C 03190, C 03476 and C 03191). These oil and gas leases covered most of the lands included in the Bute claims. Most of the leases were subsequently relinquished or terminated. However, some 1800 acres within the Bute claims are still covered by oil and gas leasees issued in 1951 (C 03191 A, C 03190 B, and C 03189 A).*

During 1952 and 1954 three applications for oil and gas leases were filed on lands covered by the Bute

* When partial assignments of a lease are made the lease is segregated into separate leases with the assigned portion carrying an alphabetical designation after the original serial number.

claims (C 05102, C 09578 and C 09568). Two of these leases have expired, the third has been segregated into two leases which cover a total of 320 acres and which are still in existence (C 09568 and C 09568 A).

In 1959 two applications were filed for oil and gas leases covering some 3095 acres within the Bute claims (C 033235 and C 033831). Leases were issued on the applications and the leases are still in existence.

Since 1960 eight applications have been filed for oil and gas leases covering the lands within the Bute claims (C 061538, C 079899, C 099828, C010556, C0105847, C 0116125, C 0124239 and C 0125679). On three of these applications (C 079899, C 0124239 and C 0125679) leases were issued. One of these leases (C 079899) subsequently terminated and the other two leases are still in existence. They cover a total of 720 acres within the area covered by the Bute claims. The five remaining applications for oil and gas leases are presently pending in the land office with no action having been taken to issue oil and gas leases. The leases if issued will cover approximately 1200 acres within the area covered by the Bute claims.

II. The Atlas Nos. 1, 2, 3, 7, 9, 10, 12, 17, 18.

These claims were located to cover the NW¼ of Section 10, SW¼ of Section 12, the W½ of Section 13, and the E½ and SW¼ of Section 14, and the S½ of Section 15 in Township 4 South, Range 95 West. They cover about 1,440 acres including 80 acres that were not subject to mining location when the claims were allegedly located. The history of these lands is shown by Exhibit GG—1. This exhibit contains copies of (1) the tract book pages previous-

ly maintained in the Denver land office containing entries relating to the subject lands, (2) the plat book pages maintained in the Denver land office relating to the subject lands, (3) the tract book pages maintained in the Washington office of the Bureau of Land Management containing entries relating to the subject lands.[1] (4) the plat book pages maintained in the Washington office of the Bureau of Land Management relating to the subject lands, (5) the pages from the recently installed records of the Denver land office covering all actions that have occurred with respect to the subject lands, (6) the serial register pages from the serial register books of the Denver land office containing entries in abstract form with respect to certain types of action that have taken place with respect to the subject land, and (7) a diagram showing the lands covered by the subject claims.

Chronologically the history of the action that has taken place with respect to these lands as shown by the records of the Bureau of Land Management is as follows.

In 1916 the entire township was classified as mineral lands valuable as a source of petroleum and nitrogen by reason of the prospective value of the oil shale believed to underlie the lands (Exhibit N).

At the time that the Atlas claims were located the land was vacant, unappropriated public domain with the exception of 80 acres (the E½/SW¼ of Section 14) which was covered by the Atlas No. 10. The SE¼/SW¼ of Section 14 had been patented under

[1] The Washington tract book pages covering the lands included in the Atlas claims were placed in Exhibit GG—3 relating to the Camp Bird claims, and the Washington tract book pages with respect to the Camp Bird claims were placed in Exhibit GG—1 relating to the Atlas claims.

a cash entry (GS 0490) on June 19, 1911, without a reservation of oil, gas, oil shale, or other minerals to the United States.[8] The NE¼/SW¼ of Section 14 had been patented under a cash entry (GS 011822) on July 13, 1917, which reserved the oil shale to the United States under the Act of July 17, 1914, 38 Stat. 509, 30 U.S.C. 121, *et seq.*[9]

On September 4, 1919, an isolated tract application was made for a Cash Entry Patent on 40 acres covered by the Atlas claims (GS 017374). The sale was made at $3.00 per acre on May 6, 1921, and a patent was issued on October 20, 1921, with a reservation of the oil shale to the United States under the Act of July 17, 1914, *supra.*[10]

In 1920 two applications were made for Additional Stock Raising Homestead Entries (GS 018904 and GS 019055) for a total of 480 acres included within the Atlas claims. By 1922 these two applications were rejected or released.

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[8] It seems somewhat unusual that the mining claimants would locate a mining claim on lands that had previously been patented without a reservation of any minerals to the United States.

[9] The Act of July 17, 1914, *supra*, specifically provided that the reserved deposits would be "subject to disposal by the United States only as shall be hereafter expressly directed by law." The direction for disposal did not come until the Mineral Leasing Act of February 25, 1920, was enacted. The situation here is different from the homesteads that cover a portion of the Bute claims and that are discussed in footnote 1. At the time the Bute claims were located the homesteads, although subsisting entries, had not as yet gone to patent with a reservation of minerals under the 1914 act to the United States.

[10] There is nothing to indicate that the mining claimants protested or took any action as of the time the entry was being made or the patent was issued.

On April 24, 1922, two more applications were filed for Stock Raising Homestead Entries (D 033057 or GS 021842 and D 033059 or GS 021845) for a total of 240 acres of the lands. These entries were allowed on January 15, 1924, but the applicants failed to make proof of their entries and on April 26, 1929, the entries were cancelled.

In 1927 three applications for Oil and Gas Prospecting Permits were made (D 038960, D 038980, and D 039252) covering 1,240 acres of the lands. The permits that were issued on all three applications were exchanged for oil and gas leases dated December 31, 1938, and these leases remained in existence until they expired or were cancelled in 1941.[11]

On April 15, 1930, by Executive Order No. 5327 the entire township was withdrawn under the Act of June 25, 1910 (36 Stat. 847), as amended by the Act of August 24, 1912 (37 Stat. 497), from lease or other disposal and reserved for the purpose of investigation, examination and classification (Exhibit Q).

On April 3, 1931, the Act of February 28, 1931 (46 Stat. 1484) was construed to permit stock-raising homestead applications to be made for lands covered by the Executive withdrawal of April 15, 1930 (Exhibit Q). As of July 18, 1934, all stock-raising homestead designations were cancelled in the township by Order No. 130.

By Executive Order of February 6, 1933, the oil shale withdrawal of April 15, 1930, was modified to permit the issuance of oil and gas permits and leases

[11] Again, there is nothing to indicate that any protest, contest or any other action was taken by the mining claimants in connection with the issuance of prospecting permits and leases covering most of the lands included within the subject mining claims.

under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

On May 13, 1935, the oil shale withdrawal of April 15, 1930, was further modified to permit the issuance of sodium permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

The entire township was withdrawn on July 23, 1934, from settlement, location, sale or entry and reserved for classification and pending determination of the most useful purpose such land could be put to under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) (Exhibit R). This action was subsequently cancelled on March 28, 1939.

On September 19, 1934, the entire township was temporarily withdrawn from disposal of any kind subject to any and all existing valid rights until the matter of permanent restoration to the Ute Indians as authorized by Section 3 of the Act of June 28, 1934 (48 Stat. 964) could be given appropriate consideration (Exhibit P). This withdrawal was revoked on December 8, 1938, pursuant to Section 6 of the Act of June 28, 1938 (52 Stat. 1209) which prohibited the restoration of certain lands in the State of Colorado to tribal ownership under the provisions of the Act of June 18, 1934 (Exhibit P).

One Stock Raising Homestead Entry application was made on August 10, 1931 (D 044252). This application, which covered 320 acres was allowed on August 2, 1935, but the entryman failed to take further action on his entry and it was cancelled on December 12, 1940.

Shortly after the passage of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) the lands within the Atlas claims were placed in a Grazing District. Grazing permits and/or licenses have been issued under the Taylor Grazing Act covering the lands within

the Atlas claims over the past 30-year period (Exhibit KK).

In 1951 and 1952 four applications for oil and gas leases were made on the lands covered by the Atlas claims. Leases issued on these applications (C 03458, C 03493, C 03623 and C 03895) covering 1,400 acres, practically all of the lands within the Atlas claims. As soon as these leases expired, other oil and gas lease applications were filed, new leases were issued, and the lands were almost continually covered by oil and gas leases from 1952 to the present time.

When the assignment of lease C 03458 A expired on October 31, 1963, a new application was filed November 26, 1963, and the lease that issued upon that application (C 0116038) is still in existence. When C 03493 expired on November 30, 1960, part of the land covered by that lease was filed on December 27, 1960, by application C 053905 which is still pending. The rest of the land was applied for on February 25, 1963, and the application (C 012906) is still pending. When oil and gas lease C 03623 expired on January 29, 1955, two new applications (C 09754 and C 09965) were filed on November 30, 1954, and January 1, 1955. Leases issued on these applications and the first lease (C 09754) is still in existence and the second lease expired April 30, 1962. The lands vacated by the expiration of the second lease (C 09965) were covered by a subsequent lease (C 0111398) which is in existence today. When the last of the 1951-1952 leases expired (C 03895) on April 28, 1959, a new application (C 028378) was filed within five days. The lease on this new application expired May 31, 1963, and a new lease (C 0109516) was applied for within a month and this lease is still extant.

On the said lands a Bureau of Land Management Range Improvement Project No. 1-C-238, a reservoir,

was constructed in the NW¼ of Section 10. This was done sometime between 1951 and 1961 (Exhibit KK).

III. The Camp Bird Nos. 1 through 20.

These claims were located in January of 1920 and cover the W½ and the SW¼ of Section 2, all of Sections 3, 4, 9 and 16 and the SE¼ of Section 17, Township 4 South, Range 95 West. The history of these lands is shown by Exhibit GG—3. This exhibit contains copies of (1) the tract book pages previously maintained in the Denver land office containing entries relating to the subject lands, (2) the plat book pages maintained in the Denver land office relating to the subject lands, (3) the tract book pages maintained in the Washington office of the Bureau of Land Management containing entries relating to the subject lands,[12] (5) the pages from the recently installed records of the Denver land office covering all actions that have occurred with respect to the subject lands, (6) the serial register pages from the serial register books of the Denver land office containing entries in abstract form with respect to certain types of action that have taken place with respect to the subject land, and (7) a diagram showing the lands covered by the subject claims.

Chronologically the history of the action that has taken place with respect to these lands as shown by the records of the Bureau of Land Management is as follows:

In 1916 the entire township was classified as mineral lands valuable as a source of petroleum and ni-

[12] The Washington tract book pages covering the lands included in the Camp Bird claims were placed in Exhibit GG—1 relating to the Atlas claims.

trogen by reason of the prospective value of the oil shale believed to underlie the lands (Exhibit N).

At the time the Camp Bird claims were located the land was vacant, unappropriated public domain with the exception of 120 acres in Section 2 which were part of a homestead entry that had been filed September 19, 1916 (GS 011131). The lands in this entry were patented under the homestead laws on May 13, 1921, with a reservation to the United States of the oil shale under the Act of July 17, 1914, *supra*.[13] In addition, at the time the claims were allegedly located an application was pending for an additional stock raising homestead entry that had been filed on September 4, 1919, covering 40 acres of the lands (GS 017369). The application was allowed in 1922 but relinquished in 1928.

On June 10, 1920, a homestead entry was filed on 200 acres of the said lands (GS 019292) which was allowed but relinquished by 1926. As soon as it was relinquished a stock-raising homestead application was filed upon the 200 acres and 200 additional acres (GS 030327), but this application was rejected in 1927. In 1928 an application for a stock-raising homestead entry was made on 40 acres (D 040368) which was allowed in 1929 but cancelled in 1934.

In July of 1927, two applications for oil and gas prospecting permits under the Mineral Leasing Act of February 25, 1920, were filed. The resulting permits (D 038959 and D 038997), covering 2,720 acres of the said lands (all except the 480 acres in Section 2), were exchanged for oil and gas leases on December 31, 1938, but these leases were cancelled or relinquished in 1941.[14]

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[13] See the comments in footnotes 1 and 2, *supra*, in connection with the Bute claims.

[14] There is nothing in the records of the Bureau of Land Management to indicate that any protest, contest, or any

On April 15, 1930, by Executive Order No. 5327 the entire township was withdrawn under the Act of June 25, 1910 (36 Stat. 847), as amended by the Act of August 24, 1912 (37 Stat. 497), from lease or other disposal and reserved for the purpose of investigation, examination and classification (Exhibit Q).

On April 3, 1931, the Act of February 28, 1931 (46 Stat. 1484) was construed to permit stock-raising homestead applications to be made for lands covered by the Executive withdrawal of April 15, 1930 (Exhibit Q). By Order No. 130 all designations for stock-raising homestead entries under the Act of December 29, 1916, were cancelled in the township.

By Executive Order of February 6, 1933, the oil shale withdrawal of April 15, 1930, was modified to permit the issuance of oil and gas permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

On May 13, 1935, the oil shale withdrawal of April 15, 1930, was further modified to permit the issuance of sodium permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

The entire township was withdrawn on July 23, 1934, from settlement, location, sale or entry and reserved for classification and pending determination of the most useful purpose such land could be put to under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) (Exhibit R). This action was subsequently cancelled on March 28, 1939.

On September 19, 1934, the entire township was temporarily withdrawn from disposal of any kind

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other action was taken by the mining claimants in connection with the issuance of prospecting permits and leases covering most of the lands included within the subject mining claims.

subject to any and all existing valid rights until the matter of the permanent restoration to the Ute Indians as authorized by Section 3 of the Act of June 28, 1934 (48 Stat. 964) could be given appropriate consideration (Exhibit P). This withdrawal was revoked on December 8, 1938, pursuant to Section 6 of the Act of June 28, 1938 (52 Stat. 1209) which prohibited the restoration of certain lands in the State of Colorado to tribal ownership under the provisions of the Act of June 18, 1934 (Exhibit P).

Shortly after the passage of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) the lands within the Camp Bird claims were placed in a Grazing District. Grazing permits and/or licenses have been issued under the Taylor Grazing Act covering the lands within the Camp Bird claims over the past 30-year period (Exhibit KK).

In 1945 2,080 acres of the said lands were subject to applications for oil and gas leases (053584, 053585, and 053586). These applications were subsequently withdrawn.

In 1951 three applications were filed for oil and gas leases on the said lands (C 03017, C 03019 and C 03458). Oil and gas leases were issued upon these applications which covered all 3,200 acres within the Camp Bird claims. These leases expired in 1959, 1960 and 1963, respectively. Within three months after the expiration date of these leases, new applications were filed upon the vacated lands. Two leases were issued on these applications (C 034229 and C 0116038) covering 1,760 acres of the subject lands. These leases are still in existence. The application for the remaining 1,440 acres in the subject lands (C 051772) is still pending.

Various range improvements have been made upon the subject lands pursuant to the Taylor Grazing Act.

There have been three reservoirs placed upon the land (Project 1-C-235, SE¼SE¼ Section 4; Project N 1-C-234, NW¼SE¼ Section 9; and Project C-1-424, SE¼ Section 17). A half-moon fence was constructed on the NW¼ Section 2 and E½SE¼ Section 3 (01-129).

IV. The Carbon Nos. 1 through 5 and the Elizabeth Nos. 1, 2 and 4 through 12.

These claims were located in April and May of 1918, and cover the N½N¼ of Section 32, all of Sections 33, 34, and 35, and the N½N½ and the S½ of Section 36. Township 4 South, Range 97 West. The 16 claims cover a total of 2,560 acres. The history of these lands is shown by Exhibit FF. This exhibit contains copies of (1) the tract book pages previously maintained in the Denver land office containing entries relating to the subject lands, (2) the plat book pages maintained in the Denver land office relating to the subject lands, (3) the tract book pages maintained in the Washington office of the Bureau of Land Management containing entries relating to the subject lands, (4) the plat book pages maintained in the Washington office of the Bureau of Land Management relating to the subject lands, (5) the pages from the recently installed records of the Denver land office covering all actions that have occurred with respect to the subject lands, (6) the serial register pages from the serial register books of the Denver land office containing entries in abstract form with respect to certain types of action that have taken place with respect to the subject land, and (7) a diagram showing the lands covered by the subject claims.

Chronologically the history of the action that has taken place with respect to these lands as shown by

the records of the Bureau of Land Management is as follows:

In 1916 the entire township was classified as mineral lands valuable as a source of petroleum and nitrogen by reason of the prospective value of the oil shale believed to underlie the lands (Exhibit N).

At the time the Carbon and Elizabeth claims were located the land was vacant, unappropriated public domain with the exception of 80 acres on which an application for a homestead entry had been filed on September 13, 1919 (GS 017477). This entry was allowed on November 29, 1919, but subsequently relinquished by January 8, 1921.

In 1920 seven agricultural entries were made on the subject lands (GS 019033, GS 019034, GS 019046, GS 019047, GS 020211, GS 020212, and GS 020213) covering approximately 1,000 acres. All of these entries were allowed, but five of them were subsequently relinquished or cancelled. Two of the entries (GS 019046 and GS 019047), covering 440 acres, were subsequently patented in 1924 and 1926, respectively, with a reservation of oil shale to the United States under the Act of July 17, 1914, *supra*.[15]

On April 28, 1926, a stock-raising homestead entry was filed on 120 acres of the subject lands (GS 040215). This application was cancelled in 1930.

In 1931 an additional stock-raising homestead entry was filed on 120 acres of the subject lands (D 044042). This entry was allowed on August 2, 1935, but was subsequently cancelled in 1936.

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[15] There is nothing to show that the mining claimants protested, contested or took any action when these homestead entries were made, during the time the necessary homestead improvements were being completed, or during the time that notice of intention to submit final proof was published in the *White River Review* in Rifle, Colorado.

An application for an oil and gas prospecting permit including 640 acres of the said lands was filed in 1932 and a permit was issued in 1933 (D 044989). This permit was cancelled in 1940.[16]

On April 15, 1930, by Executive Order No. 5327 the entire township was withdrawn under the Act of June 25, 1910 (36 Stat. 847), as amended by the Act of August 24, 1912 (37 Stat. 497), from lease or other disposal and reserved for the purpose of investigation, examination and classification (Exhibit Q).

On April 3, 1931, the Act of February 28, 1931 (46 Stat. 1484) was construed to permit stock-raising homestead applications to be made for lands covered by the Executive Withdrawal of April 15, 1930 (Exhibit Q). All stock-raising homestead entry designations in the township were revoked on July 10, 1934.

By Executive Order of February 6, 1933, the oil shale withdrawal of April 15, 1930, was modified to permit the issuance of oil and gas permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

On May 13, 1935, the oil shale withdrawal of April 15, 1930, was further modified to permit the issuance of sodium permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

The entire township was withdrawn on July 23, 1934, from settlement, location, sale or entry and reserved for classification and pending determination of the most useful purpose such land could be put to

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[16] There is nothing in the records of the Bureau of Land Management to indicate that any protest, contest or any other action was taken by the mining claimants in connection with the issuance of the prospecting permit and the lease.

under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) (Exhibit R.) This action was subsequently cancelled on March 28, 1939.

On September 19, 1934, the entire township was temporarily withdrawn from disposal of any kind subject to any and all exising valid rights until the matter of permanent restoration to the Ute Indians as authorized by Section 3 of the Act of June 28, 1934 (48 Stat. 964) could be given appropriate consideration (Exhibit P). This withdrawal was revoked on December 8, 1938, pursuant to Section 6 of the Act of June 28, 1938 (52 Stat. 1209) which prohibited the restoration of certain lands in the State of Colorado to tribal ownership under the provisions of the Act of June 18, 1934 (Exhibit P).

Shortly after the passage of the Taylor Grazing Act of June 28, 1934, (48 Stat. 1269) the lands within the claims were placed in a Grazing District. Grazing permits and/or licenses have been issued under the Taylor Grazing Act covering the lands within the Carbon and Elizabeth claims over the past 30-year period (Exhibit JJ).

On June 24, 1947, four applications for oil and gas leases were filed covering all of the subject lands (D 055616, D 055617, D 055618 and D 055619). Leases issued pursuant to these applications and they remained in existence until 1962 when they expired or were cancelled.

In 1962 four more applications for oil and gas leases were filed upon the subject lands (C 091211, C 091475, C 095552, and C 095492). These applications covering 2,480 acres of the land included within the mining claims are being held in abeyance at the present time because of the application for mineral patent covering the subject claims that was filed in 1959.

V. The Northwest, the Northeast and the Southeast Claims.

These claims were located in July of 1918, on the N½NW¼, SW¼NW¼, NE¼ and SE¼ of Section 27, Township 7 South, Range 98 West. The claims cover 440 acres of land. The history of these lands is shown by Exhibit EE. This exhibit contains copies of (1) the tract book pages maintained in the Denver land office containing entries relating to the subject lands, (2) the plat book pages maintained in the Denver land office relating to the subject lands, (3) the tract book pages maintained in the Washingon office of the Bureau of Land Management containing entries relating to the subject lands, (4) the plat book pages maintained in the Washington office of the Bureau of Land Management relating to the subject lands and (5) the serial register pages from the serial register books of the Denver land office containing entries in abstract form with respect to certain types of action that have taken place with respect to the subject lands.

Chronologically the history of the action that has taken place with respect to these lands as shown by the records of the Bureau of Land Management is as follows.

In 1916 400 acres of the subject lands were classified as mineral lands valuable as a source of petroleum and nitrogen by reason of the prospective value of the oil shale believed to underlie the lands (Exhibit N).

At the time the Northwest, the Northeast and the Southeast claims were located the land was vacant, unappropriated public domain. On July 9, 1923, by Executive Order 3867, the entire township was withdrawn from settlement, location, sale, entry and all forms of appropriation pending a resurvey. The resurvey was filed and accepted in 1926.

On April 15, 1930, by Executive Order No. 5327 the entire Section was withdrawn under the Act of June 25, 1910 (36 Stat. 847), as amended by the Act of August 24, 1912 (37 Stat. 497), from lease or other disposal and reserved for the purpose of investigation, examination and classification (Exhibit Q).

On April 3, 1931, the Act of February 28, 1931 (46 Stat. 1484) was construed to permit stock-raising homestead applications to be made for land covered by the Executive Withdrawal of April 15, 1930 (Exhibit Q). Order No. 130 of July 18, 1935, cancelled all stock-raising homestead designations.

By Executive Order of February 6, 1933, the oil shale withdrawal of April 15, 1930, was modified to permit the issuance of oil and gas permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

On May 13, 1935, the oil shale withdrawal of April 15, 1930, was further modified to permit the issuance of sodium permits and leases under the Mineral Leasing Act of February 25, 1920 (Exhibit Q).

The entire township was withdrawn on July 23, 1934, from settlement, location, sale or entry and reserved for classification and pending determination of the most useful purpose such land could be put to under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) (Exhibit R). This action was subsequently cancelled on March 28, 1939.

On September 19, 1934, the entire township was temporarily withdrawn from disposal of any kind subject to any and all existing valid rights until the matter of the permanent restoration to the Ute Indians as authorized by Section 3 of the Act of June 28, 1934 (48 Stat. 964) could be given appropriate consideration (Exhibit P). This withdrawal was re-

voked on December 8, 1938, pursuant to Section 6 of the Act of June 28, 1938, (52 Stat. 1209) which prohibited the restoration of certain lands in the State of Colorado to tribal ownership under the provisions of the Act of June 18, 1934 (Exhibit P).

Shortly after the passage of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269) the lands within the claims were placed in a Grazing District. Grazing permits and/or licenses have been issued under the Taylor Grazing Act covering the lands over the past 30-year period (Exhibit II).

In January of 1952 an application for an oil and gas lease was filed (C 04225) covering all of the lands within the claims. A lease was issued effective June 1, 1952. The lease expired in May of 1961. Soon after this lease expired another application for an oil and gas lease was filed on the subject lands (C 065809). This lease was suspended as to the subject lands due to conflict with the mineral patent application (C 02875) filed for the Northwest, Northeast and Southeast mining claims in 1959. The oil and gas application was withdrawn as to the subject lands in 1966.

VI. The Oyler Nos. 1 through 4.

These claims were located in September of 1916 and allegedly cover land in Sections 10, 11 and 12, Township 6 South, Range 95 West. The history of these lands is shown by Exhibit DD. This exhibit contains copies of (1) the tract book pages previously maintained in the Denver land office containing entries relating to the subject lands, (2) the plat book pages maintained in the Denver office relating to the subject lands, (3) the tract book pages maintained in the Washington office of the Bureau of Land Management containing entries relating to the subject lands, (4) the plat book pages maintained in the Washington office of the Bureau of Land

Management relating to the subject lands, (5) the pages from the recently installed records of the Denver land office covering all actions that have occurred with respect to the subject lands, (6) the serial register pages from the serial register books of the Denver land office containing entries in abstract form with respect to certain types of action that have taken place with respect to the subject lands, and (7) a mineral survey obtained by the mining claimants showing the location of the subject claims.

Chronologically the history of the action that has taken place with respect to these lands as shown by the records of the Bureau of Land Management is as follows.

In 1916 the subject lands were classified as mineral lands valuable as a source of petroleum and nitrogen by reason of the prospective value of the oil shale believed to underlie the lands (Exhibit N).

By Executive Order of December 6, 1916, all the subject lands were withdrawn and reserved as Naval Oil Shale Reserve No. 1 (Exhibit O). As a result of this withdrawal within three months after the alleged location of the Oyler claims no other action has been taken with respect to the subject lands. The only exception was an application for an oil and gas lease which was filed on October 4, 1954, covering the subject lands, which was rejected because of the Naval Oil Shale Reserve (C 09350). The lands were included in the various withdrawals between 1930 and 1934 noted in connection with the other mining claims; however, the withdrawals were not of any consequence due to the previous inclusion of the lands within the Naval Reserve.

As part of the experimental efforts of the U. S. Bureau of Mines to produce synthetic liquid fuel from oil shale, certain facilities were constructed on

the Oyler No. 4 claim by the Bureau of Mines. (Exhibit LL).

Grazing permits and/or licenses have been issued under the Taylor Grazing Act covering the lands within the claims pursuant to an agreement between the Department of the Navy and the Bureau of Land Management (Exhibit HH).

VII. Summary.

In 1935, when the Department of the Interior allegedly adopted a rule giving life to the thousands of oil shale claims that had previously been declared null and void, the following rights had attached to the lands included within the subject mining claims.

1. All of the lands had been withdrawn by the Mineral Leasing Act of February 25, 1920, from disposition under the mining laws, and reserved for disposition under a leasing system with provisions for rentals, royalties, and continuing supervision and control in favor of the public as a whole. If the claims were effectively declared invalid, then the rights of the public as a whole created by the Mineral Leasing Act of 1920 attached to the lands.

2. All of the lands had been withdrawn and reserved from disposition by Presidential Orders of April 15, 1930, and July 23, 1934, pending investigations and determinations as to the most appropriate use the land might be put to for the benefit of the public as a whole.

3. All of the lands had been withdrawn pursuant to an act of Congress in 1934 pending a determination as to whether the lands would be restored to the Ute Indians. In addition to the inchoate interest created by the act of Congress and the subsequent withdrawal, the Ute Indians had pre-existing interests in the lands stemming from a Treaty of 1880

(Exhibit P).[1] If the claims were effectively declared invalid, then the inchoate rights of the Ute Indians created by the act of Congress and the withdrawal order may have attached to the lands.

4. All of the lands within the Oyler claims had been withdrawn by Presidential Order of December 6, 1916, and placed within a Naval Oil Shale Reserve. The lands and the oil shale deposits within the lands were placed under the administration of the Department of the Navy for the benefit of the public as a whole.

5. 1400 acres (800 within the limits of the Bute claims, 40 within the Atlas claims, 120 within the Camp Bird claims, and 440 within the Carbon and

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[1] In *The Confederated Bands of Ute Indians* v. *The United States* (1943) (100 Ct. C. 413, the following statements were made:

> "No judicial decision has been called to our attention which is not consistent with the Indians' claim that, under the agreement of 1880, they retained an interest in their former reservation. Statements that the United States was, in comparable situations, a trustee for the Indians for the purpose of selling the land, appear in the opinions of the Supreme Court of the United States in a number of cases. The most pointed of these statements are in *United States* v. *Brindle,* 110 U.S. 688, 693; *Minnesota* v. *Hitchcock,* 185 U.S. 373, 394; and *United States* v. *Mille Lac Band,* 229 U.S. 498."
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> * * * *
>
> "We do not think it is necessary in the instant case to determine whether the Government was, in the ordinary sense of that word, a trustee of the lands in question for the plaintiffs. We think it is enough to determine, and we do determine, that under the agreement of 1880, the plaintiff Indians retained an interest in the lands, which interest was completely destroyed by the United States when it inserted the Adams amendment in the 1938 act."

Elizabeth claims) had been patented under the nonmineral land laws pursuant to entries that had been made subsequent to the time of the alleged location of the mining claims. While the lands were patented with a reservation of minerals under either the Act of July 17, 1914, *supra*, or the Stock-Raising Homestead Act of December 29, 1916, 39 Stat. 862, 43 U.S.C. 291 *et seq.*, it does not necessarily follow that the homesteaders would not have been prejudiced by a disposition of the reserved minerals under the mining laws rather than under the mineral leasing law of 1920.[2]

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[2] The Act of July 17, 1914, *supra*, authorized the division of certain lands into two estates for the purpose of disposal, but specifically provided that the reserved deposits would be "subject to disposal by the United States only as shall be hereafter expressly directed by law." The direction for disposal was subsequently provided by the Mineral Leasing Act of February 25, 1920. By the 1914 act, a servitude was placed upon the surface estate for the benefit of any mineral estate that might be created in the reserved deposits, but the obligation was placed upon the holder of any such dominant estate that might subsequently be created to pay the owner of the servient estate any damages caused by entering and occupying the surface. The liability was created by the statute.

The law is unchartered as to whether the liability provisions of the act apply only where the reserved deposits are disposed of by the United States as was subsequently provided by the Mineral Leasing Act of 1920 or whether the provisions extend to rights acquired under the mining laws if there is a subsequent disposition of the surface of the lands under the 1914 act.

In *James W. Bell* (1927) 52 L.D. 197, the First Assistant Secretary stated in part as follows:

> "Here the locator has notice, merely constructive, that Helm had applied for a patent for the surface of the land, not that a proceeding was pending that would destroy his property right. Had he actual notice he might have concluded that he did not object to the issuance of a surface

patent that would reserve to the Government and its grantees the minerals and so much of the surface as might be necessary to extract the same. While under the law the department is without authority to issue to him a patent for the minerals alone, it does not necessarily follow that his right to them was forfeited by the issuance of a patent for the surface; or, in other words, that a lack of jurisdiction to do one thing does not necessarily confer authority upon the department to do something wholly different, namely, to declare forfeited a right lawfully acquired."

The *Bell* decision went on to conclude that if the mining claimant could obtain a deed to the surface and if he reconveyed the surface to the United States, the outstanding surface patent could be cancelled, and a mineral patent issued to the mining claimant for both the surface and the minerals. If the foregoing is a sound construction of the rights of a mining claimant, then it can convincingly be argued that the right acquired under the mining laws was not restricted by the imposition of a liability created by Congress in providing for the creation of separate estates and the disposition of only the surface estate. In other words, if a mining claimant does not assert his pre-existing rights under the mining laws and permits a subsequent homestead entryman to obtan a patent to the surface of the lands, he does not thereby subject himself to the liability provisions created by Congress and which are operative only in the event the reserved deposits are disposed of in the manner subsequently directed by Congress in the Mineral Leasing Act.

The Act of July 20, 1956, 70 Stat. 592, 30 U.S.C. 122, amended the 1914 Act to provide for the issuance of a patent under the mining laws where the surface had previously been patented under the 1914 act. Presumably if one obtained a patent to a mining claim under this act, rather than simply working his claim as an unpatented claim, he would subject himself to the liability imposed by the statute.

The same argument would apply to entries under the Stock-Raising Homestead Act of December 29, 1916, *supra*, with respect to prior mineral claims. (Compare Vol. 1, American Law of Mining, Sec. 3.47.)

[Footnote continued on page 179]

6. 320 acres within the Atlas claims were included in a pending stock-raising homestead entry which was subsequently allowed on August 2, 1935. A recognition of the validity of mining claims that had previously been declared invalid could completely destroy the rights of the homesteader under this entry. If the mining claimant protested the final proof under the homestead laws and showed a prior valid mining claim, the homestead entry would have been cancelled.[3]

7. 12,280 acres (7,680 within the limits of the Bute claims, 1,240 within the Atlas claims, 2,720 within the Camp Bird claims, 640 within the Carbon and Elizabeth claims) were included in outstanding oil and gas prospecting permits issued under the Mineral Leasing Act of 1920. If the mining claims had effectively been declared null and void, then the oil and gas prospecting permits would have been good. A recognition of the validity of mining claims that had previously been declared null and void would completely destroy the rights of the oil and gas permittees.

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[3] [Continued]

Under this argument a homesteader would have less rights if a pre-existing mining claim were determined to be valid than he would have if the minerals were disposed of under the Mineral Leasing Act.

[3] Compare the case of *Freeman* v. *Summers* (1927) 52 I.D. 201 (Exhibit 3) where the homestead entries were cancelled in favor of pre-existing oil shale claims. In the *Freeman-Summers* fiasco the mining claims were subsequently declared invalid on an assessment work charge, the homesteads were reinstated and patents were issued in 1932 under the homestead laws. If a blanket rule was adopted in 1935 breathing life back into the Freeman mining claims then the homestead patents were improperly issued and were held under a constructive trust by Summers for the benefit of Freeman.

It is inconceivable that the Secretary of the Interior could in 1935 have exercised his supervisory authority on a blanket basis or have adopted a rule of general application recognizing the validity of thousands of oil shale claims that had previously been declared null and void and thereby automatically destroy the rights that had been created in the lands by the action of Congress, the President and the Department of the Interior. Even assuming *arguendo* that the Presidential and Congressional withdrawals that attached to the lands would not have prevented the Secretary from giving life to oil shale claims that had been declared null and void, it seems clear that any such action by the Secretary would have had to have been on an individual case basis with appropriate consideration being given the rights that had attached to the specific lands.

At the present time, when a question exists concerning the exercise of supervisory authority by the Secretary of the Interior to give life to the thousands of oil shale claims that had previously been declared null and void, the following rights have attached to the lands included within the subject mining claims:

1. All of the lands have been withdrawn by Congressional action under the 1920 Mineral Leasing Act and reserved for disposition under a leasing system with provisions for rentals, royalties and continuing supervision and control in favor of the public as a whole.

2. All of the lands have been withdrawn by Presidential action under the Executive Order of April 15, 1930.

3. All of the lands within the Oyler claims have been withdrawn by Presidential Order and placed under the administration of the Department of the Navy.

4. 1,400 acres have been patented under the nonmineral land laws pursuant to entries made subsequent to the time of the alleged location of the claims.

5. 8,860 acres (5,900 acres within the limits of the Bute claims, 1,200 acres within the Atlas claims, and 1,760 acres within the Camp Bird claims) are included in outstanding oil and gas leases issued under the Mineral Leasing Act of 1920.

6. 5,280 acres (1,200 acres within the limits of the Bute claims, 80 acres within the Atlas claims, 1,440 acres within the Camp Bird claims, and 2,560 acres within the Carbon and Elizabeth claims) are included in pending applications for oil and gas leases.

7. All of the lands, except those patented under the homestead laws, are used in support of livestock operations pursuant to the Taylor Grazing Act. Reservoirs, fences and other range improvements have been constructed on the lands in accordance with cooperative projects between livestock operators and the Bureau of Land Management.

8. Reservoirs and other facilities used by the Bureau of Mines in connection with its experimental oil shale operations at Rifle, Colorado, have been constructed on a portion of the lands allegedly embraced within the Oyler claims.

If the assessment work decisions were effective when rendered, if the Interior Department had the requisite jurisdiction to construe the law in discharging its duties and responsibilities of investigating and determining the validity of claims asserted to the public lands, then it is inconceivable that the action of the present Secretary was arbitrary, capricious or contrary to the law in refusing to exercise his supervisory authority and breathe life into the thousands of oil shale claims that had previously

been declared null and void. It seems abundantly clear that the action that the Secretary took was the only proper course that could have been taken under the circumstances. Certainly the Secretary in the discharge of his duties to the public as a whole and the specific individuals who had acquired rights in the lands could not properly destroy the rights created by Congress, the President and the Department of the Interior in favor of such individuals as Tell Ertl, who searched out and purportedly revived claims that had lain stagnant for some 45 years. The Secretary could not properly have vacated decisions that were effective for some 30 years and permit recent-day speculators, such as Tell Ertl, to obtain rights in lands that had increased in value over the years from little or nothing to hundreds of dollars an acre to the prejudice of the interests of the public as a whole and the specific individuals who had acquired valuable rights in the lands as a result of the inaction and dereliction of mining claimants who had long ago lost all interest in the lands.

The following comments of the court in *Gabbs Exploration Company* v. *Udall* (1963, C.A.D.C.) involving oil shale claims are particularly appropriate:

> "Plaintiff's predecessors in interest might have corrected these errors or defects, if errors or defects there were, by timely appeal to the Secretary of the Interior from the decision of the Commissioner of the General Land Office. As timely appeal was not taken then, it is now too late for plaintiff to seek to correct any errors or defects by collateral attack.
>
> ". . . Plaintiff's predecessors not only did not interpose a demurrer, but failed to appeal from the decision against them. Any defect could have

been and should have been cured upon appeal. . . . As it was not done then, it should not be done now by collateral attack where no jurisdictional defect appears which justifies overturning a settled decision."

* * * *

"We need not consider whether the power to reopen prior decision is merely discretionary with the Secretary or whether, indeed, the errors urged by plaintiff demonstrate that 'manifest injustice has been done or the law clearly misapplied,' as is required for reopening. Even if we assume that Gabbs has met these threshold objections, plaintiff's argument cannot prevail. The Department of the Interior, which has recognized the right of the Secretary to reconsider certain prior decisions, has also recognized that there must be some time limit on such reconsideration. . . ."

"Here neither plaintiff nor its predecessors in interest took timely action to have the wrong righted, and plaintiff cannot complain of the Secretary's failure to reopen the case. It is significant also that in all the cases cited to us in which a prior decision was reopened the longest period elapsing before reconsideration was three years. . . ."

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